(30,594)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 629

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, APPELLANT,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

September Term, 1923. No. 2869.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

R. J. Sterrett,
Henry T. Hunt
For Plaintiff.

v.

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON AND I. W. GEER.

John Hampton Barnes,
For Defendan

DOCKET ENTRIES.

Oct.	19, 1923.	Bill of Complaint, filed.
"	19, "	Exhibits A, B, C, D, E, F, G, I and J, filed.
"	19, "	Motion for Preliminary Injunction, filed.
"	19, "	Decree fixing time for hearing. Motion for Preliminary Injunction, filed.
"	19, "	Subpœna exit—returnable November 8, 1923.
"	19, "	Duplicate Original Subpœna exit—returnable November 2, 1923.
"	22, "	Exhibit K, filed.

Oct. 29, 1923.	Duplicate Original Subpœna returned, served and filed.
" 31, "	Printed copy of Bill of Complaint, filed.
Nov. 10, 1923.	Appearance of John Hampton Barnes, Esq., for Defendant, filed.
" 13, "	Subpœna returned service accepted and filed.
" 14, "	Exhibits CC, DD, GG, M, N, O, P, I, UU, OO, PP, I, R, S, T, U, V, W, X, filed.
" 15, "	Answer, filed.
" 16, "	Exhibit FF, filed.
" 16, "	Exhibit SS, filed.
" 16, "	Exhibit Z, filed.
" 22, "	Exhibits "BB," "RR," "TT," "UU" and "VV," filed.
" 23, "	Stipulation of Counsel that hearing be had on Bill, Answer and Exhibits, filed.
" 23, "	Argued sur Motion for Preliminary Injunction.
" 27, "	Exhibits "HH," "JJ" and Y, filed.
" 27, "	Authenticating Affidavit "BB," etc., filed.
" 27, "	Interstate Commerce Commission Pamphlet 12011 filed.
" 27, "	Bulletin of U. S. Bureau of Labor Statistics No. 303, filed.
" 30, "	Affidavit of Henry T. Hunt, filed.
Dec. 21, 1923.	Opinion, Dickinson, J., Dismissing Bill of Complaint, filed.
" 21, "	Decree dismissing Bill of Complaint, filed.
" 21, "	Petition for Appeal, filed.
" 21, "	Decree granting prayers of petition, filed.

Dec. 21, 1923.	Assignments of Error, filed.
" 21, "	Præcipe for transcript of record sur appeal, filed.
" 21, "	Copy of Notice of Appeal, filed.
Jan. 16, 1924.	Bond sur appeal in $200, filed.
" 16, "	Decree approving Bond sur Appeal, filed.
" 16, "	Citation allowed and issued.
" 19, "	Citation returned: service accepted, and filed.

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees,

Complainant,

against

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, C. S. Krick, M. W. Clement, T. B. Hamilton and I. W. Geer,

Defendants.

BILL IN EQUITY.

(Filed October 19, 1923.)

To the Honorable Judges of the District Court of the United States for the Eastern District of Pennsylvania:

(1) *First.*—The complainant, the Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, brings this action as representative of the members of the said Brotherhood, employees of the Pennsylvania System, who are very numerous, and brings it also for the benefit of other employees of the Pennsylvania System, to-wit: clerical forces and office, station, warehouse, storehouse, elevator forces, and engine and train crew callers, comprising some forty thousand persons.

(2) The members of the said Brotherhood (employees of the Pennsylvania System) with a few exceptions are citizens of the United States and are citizens and resi-

dents of Pennsylvania, New York, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Ohio, Kentucky, Indiana, Illinois and Missouri.

(3) The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter called the Brotherhood of Railway Clerks, is an unincorporated association or organization of railway and steamship clerks, freight handlers, office, station, warehouse, storehouse and elevator forces and engine and train crew callers, employees of carriers engaged in interstate commerce. The employees of the Pennsylvania System, comprised within the classifications described, are eligible to membership in said Brotherhood, and a large number of said employees, approximately five thousand, are members.

(4) The objects of the Brotherhood of Railway Clerks are "to promote unity of action for mutual protection and to promote the general welfare of said crafts." The source of authority in the Brotherhood is the Grand Lodge, which is composed of its grand officers, and representatives of each local lodge chartered by the Grand Lodge.

(5) Each local lodge elects a protective committee of three or more members for each division of each railroad system. The system boards of adjustment are composed of the chairmen of these protective committees.

(6) A copy of "Statutes for the government of lodges and protective laws of the Brotherhood of Railway Clerks" is annexed marked "Exhibit A."

(7) A copy of "By-laws of the Board of Adjustment Pennsylvania System" is annexed marked "Exhibit B."

(8) The System Board of Adjustment of the Pennsylvania System is authorized by the members of said Brotherhood, employees of the System, to act as their representative in relations with the management and

to act as their representative with regard to proceedings under Title III of the Transportation Act.

(9) *Second.*—The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, having its main office and doing business in the Eastern District of Pennsylvania.

(10) The Pennsylvania Railroad Company controls through stock ownership, leases and otherwise a number of railroad carriers, whose properties it operates in the states of Pennsylvania, New York, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Ohio, Kentucky, Indiana, Illinois and Missouri as the Pennsylvania Railroad System.

(11) The defendant, Samuel Rea, is now and was at the times hereinafter set forth, the President of the Pennsylvania Railroad Company and is a citizen and resident of the Eastern District of Pennsylvania.

(12) The defendant, W. W. Atterbury, is now and was at the times hereinafter set forth, the Vice-President in Charge of Operation of the Pennsylvania Railroad Company and is a resident and citizen of the Eastern District of Pennsylvania.

(13) The defendant, George L. Peck, is now and was at the times hereinafter set forth, the Vice-President in Charge of Personnel of the Pennsylvania Railroad Company and is a citizen and resident of the Eastern District of Pennsylvania.

(14) The defendant, Elisha Lee, is now and was at the times hereinafter set forth, the Vice-President of the Eastern Region of the Pennsylvania Railroad Company, and is a citizen and resident of the Eastern District of Pennsylvania.

(15) The defendant, C. S. Krick, is now and was at the times hereinafter set forth the General Manager of

the Eastern Region of the Pennsylvania System, and is a citizen and resident of the Eastern District of Pennsylvania.

The defendant, M. W. Clement, is now and was (16) at the times hereinafter set forth, the General Manager of the Central Region of the Pennsylvania System, and is a citizen and resident of Pittsburgh, Pennsylvania.

The defendant, T. B. Hamilton, is now and was at (17) the times hereinafter set forth, the General Manager of the Northwestern Region of the Pennsylvania System and is a citizen and resident of Chicago, Illinois.

The defendant, I. W. Geer, is now and was at the (18) times hereinafter set forth, the General Manager of the Southwestern Region of the Pennsylvania System, and is a citizen and resident of St. Louis, Missouri.

Third.—This is a case arising under the Trans- (19) portation Act of 1920 and involves the construction of Title III thereof, hereinafter designated as Title III.

The defendants have combined and conspired to (20) obstruct, defeat and render unavailing to the clerical and station employees of the Pennsylvania System, the remedy and procedure for unjust and unreasonable wages and working conditions afforded by said Title III.

The utilization by the said employees of the pro- (21) cedure and remedy established by Title III has been and is now being denied and defeated through unlawful acts of the defendants in furtherance of said combination and conspiracy.

This action involves a controversy arising under (22) the laws of the United States.

Fourth.—On December 28, 1917, the President of (23) the United States, by authority of the Act of Congress of August 29, 1916, took over the railroads of the United States, including those of the Pennsylvania

Railroad System, and operated them through the Director General of Railroads until March 1, 1920, when, pursuant to the Transportation Act of 1920, possession was restored to the owning companies and the possession of the Pennsylvania Railroad System was restored to the Pennsylvania Railroad Company.

(24) During Federal operation, the Director General issued certain General Orders fixing wage rates and rules regulating working conditions for the several classes of employees, and also entered into National Agreements determining working conditions with several of the organizations of employees.

(25) Among such National Agreements was that entered into on the 13th day of January, 1920, between the Director General and the Brotherhood of Railway Clerks, which agreement, like the others, defined the class of employees affected thereby and the grades and divisions of such class, specified the work to be done by each grade and division, the hours of service, when payment should be made, how work apportioned, grievances adjusted, apprentices trained and otherwise fixed the rights and obligations of the carrier and of the class of employees affected.

(26) The said agreement of January 13, 1920, and the General Orders relating to the clerical positions and the incumbents thereof were applied to such positions on the Pennsylvania System and were in full force and effect from the dates thereof to March 1, 1920, and thereafter up to about April 15, 1921.

(27) In February, 1920, the Brotherhood of Railway Clerks, among other organizations of railway employees, presented requests for wage increases and for the improvement of working conditions to the Director General. That officer declined to act in view of the approaching termination of Federal control and was supported by the President in that position. However, the President on February 13, 1920, agreed to use his

influence toward the establishment by Congress of legal machinery to deal with this and like controversies between carriers and their employees. Accordingly, the President transmitted certain messages to Congress requesting the establishment of such machinery. In part as a result thereof, Congress enacted Title III of the Transportation Act of 1920. The purpose of this Title is to prevent interruption of operation of railroads by reason of the non-settlement of disputes between carriers and their employees. To accomplish this purpose, Congress in said Title establishes a method for settling such disputes and a remedy for unjust and unreasonable wages and working conditions and procedure to attain said remedy.

After the enactment of Title III, and pursuant to Section 301 thereof, requests for increases in wages and changes in working conditions of clerical employees, submitted to the Director General, were the subject of conference between the representatives of carriers, including the Pennsylvania System, and the representatives of employees, including the Brotherhood of Railway Clerks, from March 1, 1920, to April 1, 1920. This conference resulted in complete failure to agree. (28)

Accordingly, pursuant to Sections 301 and 307 of Title III, the representatives of carriers, including the Pennsylvania Railroad Company, and the representatives of the organizations of employees, including the Brotherhood of Railway Clerks, made application on April 15, 1920, to the Railroad Labor Board for its decision on the dispute thus undecided. (29)

In July, 1920, the Labor Board rendered its decision (decision #2) upon the wage portion of the dispute, reserving that portion involving rules and working conditions for later decision. In decision #2, the Board included the following provision: (30)

"The Board assumes as a basis of its decision the continuance in full force and effect of the rules, working conditions and agreements in force under authority of the United States Railroad Administration, pending the presentation, consideration and determination of questions pertaining to the continuation or modification of such rules and conditions. No changes therein shall be made except by agreement between the carrier and the employees concerned. As to all questions with reference to the continuation or modification of such rules and working conditions, further hearings will be had at the earliest practicable date and decision thereon will be rendered as soon as adequate consideration can be given."

(31) A copy of said decision #2 is annexed marked "Exhibit C."

(32) On January 31, 1921, W. W. Atterbury, one of the defendants herein, as Chairman of the Labor Committee of an association of railroad carriers called the Association of Railway Executives, of which association the Pennsylvania Railroad Company was a member, in pursuance of a resolution of the said association arrived at by collective action of the members of the association, appeared before the Labor Board and demanded that the Board remand the question as to what should constitute just and reasonable working conditions for negotiation between each carrier and its own employees.

(33) On April 14, 1921, the Labor Board made public an interlocutory decision (Decision #119) upon that portion of the dispute reserved by it in its decision #2 as aforesaid, to-wit: the portion relating to rules and working conditions. This decision #119 granted that part of the demand of January 31, 1921, with regard to the remanding of rules disputes still undecided to negotiation between each carrier and its own employees.

The Board by decision #119 called upon the officers of the carriers, including the officers of the Pennsylvania System, and upon the system organizations of employees, parties to the dispute, including the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks, to confer on the dispute and to decide so much thereof as they could decide and to again refer any undecided portion to the Board. (34)

A copy of said decision #119 is annexed marked "Exhibit D." (35)

By this decision, the Labor Board announced the conditional termination on July 1, 1921, of its direction in decision #2 quoted above. Decision #119 stated that if the management of any carrier and the system organization of the employees failed to agree, prior to July 1, 1921, the Board reserved the right to defer termination of its said direction with respect to the particular carriers and particular classes of employees. The Pennsylvania System and the clerical and station and shop crafts employees thereof having failed to agree, the Board by interlocutory order of June 27, 1921, deferred the termination of this said direction with regard to the Pennsylvania System and said classes of employees. (36)

On numerous occasions after March 1st, 1920, and prior to April 15, 1921, the defendants conferred with the System Board of Adjustment of the Brotherhood of Railway Clerks as the duly designated and authorized representative, pursuant to Section 301, of clerical and of station employees (miscellaneous forces) of the Pennsylvania System and of the several regions of the Pennsylvania System. (37)

The clerical and station employees of the System have never since April 15, 1921, duly and legally designated and authorized any other representative than the said System Board of Adjustment. (38)

(39) On or about May 1, 1921, and in Philadelphia, Pennsylvania, the defendant Atterbury and the other defendants, officers of the System and of its regions, combined and conspired by concerted action to obstruct, defeat and render unavailing to the said clerical and station employees (miscellaneous forces) of the Pennsylvania System the remedy, procedure, rights and privileges afforded and established in and for them by Title III of the Transportation Act of 1920, and to injure, oppress, threaten and intimidate said employees, citizens of the United States in the free exercise and enjoyment of rights and privileges secured to them by said Title. Then and there the said defendants, with the unlawful intent, purpose and object of obstructing, defeating and rendering unavailing to the said employees the remedy for unjust and unreasonable wages and working conditions and the said procedure afforded them by Title III and the rights established in them by Title III, entered into an unlawful combination and conspiracy to compass and accomplish said intent, and then and there devised and formulated an unlawful plan, scheme and method to further said combination and conspiracy.

(40) The said unlawful plan and scheme was as follows:

(41) (a) To defeat the exercise of the right established in clerical and station employees of the said system to designate and authorize an organization of clerical and station employees directly interested in the dispute as their representative to confer with officers of the carrier as provided by Section 301 of Title III.

(42) The effect and object of defeating this right was to hamper, impede, obstruct and render unavailing the only practicable and convenient means whereby said employees could utilize the procedure and remedy and exercise the rights afforded them by Title III. The defeat of the exercise of this right tended to enable

the defendants to establish and maintain such wages and working conditions for clerical and station employees as the defendants saw fit, free from utilization by said employees of the remedy and procedure afforded by Title III, and free from the danger of a decision of the Labor Board adverse to defendants' position and from the obloquy of public opinion attendant upon refusal to obey such decision.

(b) To defeat the exercise by the said employees (43)
of the rights established in them by Title III to designate and authorize as their representatives to confer with the representatives of the carrier, and to refer undecided disputes to the Railroad Labor Board, pursuant to Sections 301 and 307, the Brotherhood of Railway Clerks or its System Board of Adjustment.

The said Brotherhood then was and still is the (44)
only organization of clerical and station employees having a membership and functioning throughout the System and having processes for action whereby said membership can arrive at a common position with regard to just wages and working conditions, and having system officers experienced in the data underlying and supporting the reasonableness and justness of the wages and working conditions involved in such position.

The effect and object of defeating said right was (45)
and is to deprive the said employees of the only practicable, accustomed and convenient method and means whereby said employees could and can arrive at such position, and to deprive them of the only means whereby said employees could and can act in a collective, co-ordinated, systematic, orderly and unified manner toward the formulation and development of a dispute and towards its settlement and toward the attainment of just wages and working conditions pursuant

to the procedure and remedy and in the exercise of the rights afforded them by Title III.

(46) (c) To divide said employees into regions and districts, and to require such employees of said regions and districts to designate at an election persons actively employed in each district as representatives of and for such employees of each district, the rules of election to provide that the candidate (individual) receiving the highest vote to be considered as having been designated as representative although voted for by only a small minority of those voting in such district, and although the choice of the majority should be an organization of employees.

(47) The effect and object of the said division and requirement was and is to hinder and obstruct said employees from arriving at a common position, and to more effectively prevent them from proceeding in a collective, co-ordinated, systematic, orderly and unified manner toward the formulation and development of a dispute and toward its settlement and toward the attainment of just wages and working conditions pursuant to the procedure, remedy and rights afforded them by Title III.

(48) (d) To enter into, with individuals receiving a plurality of votes although voted for by only a small minority of employees of the district declared by defendants elected as representatives of the "Regions" of employees, regional regulations purporting to be agreed to on behalf of the body of clerical and station employees of the several regions through such individuals as representatives.

(49) The effect and object of said action in connection with (a), (b) and (c) was and is to establish such wages and working conditions as defendants see fit and to give defendants color to declare that the said regula-

tions were and are in fact agreements entered into by the body of clerical and station employees (miscellaneous forces) through their representatives, whereas in truth and in fact, by reason of (a), (b) and (c) said individuals were not and are not the representatives of such body of employees.

(e) To establish by agreement with the individuals declared by the defendants elected, though by a minority of those voting new regional and other associations of the clerical and of the office, station and other employees (miscellaneous forces) in the several regions of the Pennsylvania System in substitution for the existing and functioning Brotherhood of Railway Clerks, which said new associations should have no provisions for dues to be paid by their members for the support of the association or for payment of its officers or agents when acting on behalf of said associations as representatives to confer with the management or as counsel in Labor Board proceedings or otherwise; the said associations to be controlled by defendants and supported by funds of the Pennsylvania Railroad Company or System, and the persons purporting to act as representatives of their members to be paid with such funds. (50)

The effect and object of such establishment so agreed to was to impede, obstruct and hinder clerical and station employees in action necessary for the utilization of Title III and necessary for the exercise of the rights established by Title III. (51)

(f) To constitute such regional and other associations so established through agreement with representatives of a small minority of the employees concerned the exclusive representatives in relations with the management of the body of clerical and miscellaneous forces and of all of them whether members or (52)

non-members of the Brotherhood of Railway Clerks, and to confer with the committeemen of such associations as such exclusive representatives in conferences under Title III or otherwise, and to make announcements to employees of their intention in this regard.

(53) (g) To establish by agreement with said representatives of minorities "By-laws" for said regional organizations regulating the relations between the managements of the Pennsylvania System and the members of said organizations and purporting to be agreed to on behalf of the body of clerical, station and other forces in the operating department, which said by-laws should provide exclusive procedure for the adjustment of controversies between said employees and managements, and should provide for the establishment of joint regional committees to be made up of an equal number of officers of the Company and of the purported representatives of employees, and should provide that such joint regional committees should be the final committee with power to decide such controversies, and should provide that the employees and the management should have equal voting power in said committee, and that not less than two-thirds vote should be necessary to reach a decision.

(54) The effect and object of said establishment so agreed to of such by-laws was to hinder, impede and tend to defeat the initiation and conduct of action by clerical and station employees for the utilization of Title III and toward realizing their common conception of just and reasonable wage rates and working conditions. The effect and object of the establishment of said by-laws, joint regional committees, and procedure for the settlement of controversies was to limit controversies to individual grievance cases, and to prevent the initiation of general wage or working condition movements, and to prevent reference of any con-

troversy to the Railroad Labor Board unless the management should be willing to have it so referred and to block access by employees to the remedy afforded by Title III, and to hinder, impede and defeat the exercise of the rights established in employees by Title III.

Accordingly, the said defendants then and there (55)
adopted and formulated means to further the said unlawful plan and scheme whereby the said unlawful purpose and object of the said combination and conspiracy, to wit: the obstruction, hindrance, defeat and destruction of the procedure, remedy and rights, afforded to and established in said employees by Title III might be compassed and accomplished.

Accordingly, the said Atterbury and other defend- (56)
ants, officers of the System and of its regions, in pursuance of said unlawful end and purpose, and contrary to Section 10 of the Interstate Commerce Act and Section 19 of the Criminal Code of the United States, then and there put into effect the said means as follows:

The defendant Atterbury, on or about the 24th of (57)
May, 1921, made public announcement of Decision No. 119, that "employees have the right to select representatives from among their own number, that detailed conditions designed solely to secure an accurate expression of the desires of the employees under which representatives will be chosen will be announced" and "that men thus selected will be recognized by the management as empowered to speak for the body by whom they are chosen" and that "the representatives so chosen will be provided with the necessary transportation and the company will reimburse them for time lost and for reasonable expenses while on this service" (Exhibit E attached).

The said defendants, on or about the same time, (58)
and without consent of representatives of such employees, formulated and promulgated rules to govern

the conduct of said election, which rules fixed, among other things, the method of nominating such representatives, the form of ballot, the qualifications to entitle employees to vote, provided that a plurality, though a minority of those voting, might elect, and divide the system into regions and districts, within each of which the clerical and station employees of the district were to vote severally for representatives (employed in the district) to represent employees of said district and with a view to the establishment of regional "agreements" and regional associations.

(59) The complainants were at all times active and diligent in support of and in defense of the rights and remedy established in clerical and station employees by Title III and on their part at all times proceeded in the manner prescribed thereby.

(60) The complainants upon notice of the defendants' intention to hold such election, requested a conference for the purpose of agreeing upon a plan of election in accordance with Title III and whereby the rights, procedure and remedy afforded by said Title might be preserved. The defendants, however, refused to alter said plan and rules for the conduct of the proposed election, and thereupon the System Board of Adjustment, through the Brotherhood of Railway Clerks, made application to the Labor Board for its decision on the dispute with regard to said election.

(61) Nevertheless, the said defendants, despite said application and contrary to Title III, which requires the maintenance of the *status quo* pending the Labor Board's decision on any dispute between an organization of employees and a carrier, unlawfully proceeded to hold said election on May 29, 1921, pursuant to the rules established by them. Said election and rules of election, in addition to being in their entirety contrary

to Title III, were in detail unlawful in the following respects:

(62) (1) The election rules denied an opportunity to clerical and station employees to designate an organization of employees as representative.

(63) (2) The ballot printed and applied by said defendants provided no space within which the voter might designate an organization of employees as his choice for representative.

(64) (3) The election rules did not provide for System but only for regional representation.

(65) (4) The rules permitted the defendants to declare elected persons receiving but a small minority of the votes cast.

(66) (5) The rules required that the said employees should vote by arbitrary districts and sub-divisions created by the defendants as follows: the general office forces at Philadelphia and Pittsburgh were segregated and then divided into six or more departments, each department to elect a committee of representatives. The remainder of said employees were separated into divisions comprised in the four operating regions of the Pennsylvania System, namely, the Eastern, Central, Northwestern and Southwestern regions, and the Altoona Works with the provision that the employees of each division in said regions and of each general superintendent's office should designate three representatives as a division committee to speak and act for such employees of the division; the chairmen of the division committees to become members of a General Committee to speak and act for such employees before the General Superintendent and General Managers. No provision was made for System representa-

tion (see Labor Board decision No. 220, a copy of which is attached marked "Exhibit F").

(67) A great part of the clerical and station employees, members and non-members of the Brotherhood of Railway Clerks, refused to vote for the reason that said election, held during the pendency of proceedings to determine its legality, was unlawful.

(68) Nevertheless, the defendants, officers of the System and of its Region, unlawfully, as part of the plan agreed upon by them to further said conspiracy to defeat the remedy, afforded said employees by Title III, held said election on May 29, 1921, pursuant to said unlawful election rules and in furtherance of said conspiracy themselves designated as representatives of employees persons receiving but a small percentage of votes, far less than a majority of the votes cast on the System Regions, except the System General Office, and in pursuance of said conspiracy conferred divisionally and regionally with the persons so declared by them designated as the representatives of clerical and station employees and entered into with them regional "agreements" and established regional associations as hereafter more particularly described.

(69) The regional "agreements," "regulations" and associations created by the defendants in pursuance of the unlawful object of its conspiracy are based upon the unlawful election of 1921 and are unlawful.

(70) The election for representatives of clerical and station employees was held by the defendants on the day set, May 29, 1921. Two forms of ballot were provided, one for strictly clerical employees and one for station and other employees. A large number of the members of the Brotherhood of Railway Clerks, as stated, refrained from voting inasmuch as such voting might estop their claim that the election was illegal and prejudice the proceedings then pending before the La-

bor Board to determine the legality of the election. However, in two of the six regions set up by the company for election of representatives of strictly clerical employees, a majority of the employees who did vote cast their votes for the Brotherhood of Railway Clerks. These votes were declared void by the management and the choice of the majority voting in these two regions was defeated. The said two regions were the northwestern where 1911 ballots were cast for the Brotherhood of Railway Clerks out of a total of 1934 votes cast, and the southwestern where the Brotherhood of Railway Clerks received 1375 out of a total of 1820 votes cast. In the central region, 3900 voted and 1165 voted for the Brotherhood of Railway Clerks. In this region, the said Brotherhood had a large plurality over the next highest candidate of the strictly clerical employees.

Out of 27,839 declared by the defendants eligible to vote, 18,692 voted, or about two-thirds. Out of these 996 cast blank or defective ballots. Out of 17,696 effective ballots cast on the entire system, 4612 were cast for the Brotherhood of Railway Clerks, which had, as stated, a majority in two regions out of the six, a large plurality in a third and a great plurality on the entire system. (71)

More than 9000 clerical employees declared by the defendants eligible to vote (which 9000 comprised to a large extent members of the Brotherhood of Railway Clerks), did not vote. (72)

The station and other employees, as stated, were required to vote a separate ballot. On the southwestern region, out of 665 votes cast by this class, 566 voted for the complainant organization; in the northwestern, out of 1071 votes cast, 837 voted for it. In the central region, out of 1267 votes cast, 900 were voted for the Brotherhood of Railway Clerks. All of these votes were thrown out and the choice of these (73)

employees denied and defeated. Persons were declared by the management to have been elected who received but a small percentage, usually less than 10 per cent. of the votes cast. Of this class, out of 6202 votes cast, 435 were blank or defective. Out of 5767 effective votes cast, 3102 were cast for the Brotherhood of Railway Clerks, a substantial majority.

(74) A copy, certified by the Secretary of the Railroad Labor Board, of statement furnished Railroad Labor Board, July 15, 1921, by E. T. Whiter, Assistant Vice-President Pennsylvania Railroad, an officer of the defendant corporation duly authorized to make such statement, which statement shows the number of votes cast and for whom, is hereto annexed marked "Exhibit G."

(75) In three out of five regions established by the defendants, a majority of the station and other employees designated the Brotherhood of Railway Clerks as their representative.

(76) Nevertheless, the defendants declared elected, as stated, persons receiving but a small percentage of the votes cast. For example, on the Akron division, central region, where there were 172 clerks, committeemen were declared by the defendants to be elected who received respectively five, five and four votes. On the eastern division, central region, out of 750 votes cast, committeemen were declared by the defendants to be elected who received ninety-four, sixty-five and sixty-one votes. On the Pittsburgh division, central region, out of 1345 votes cast, committeemen were declared elected by the defendants who received respectively 151, 147 and 146 votes. On the Renovo division, out of a total of 305 votes, a committeeman was declared elected by the defendants who received nineteen votes. On the Baltimore division, eastern region, 416 votes were cast for the Brotherhood of Railway Clerks. These votes were thrown out and a

committeeman was declared elected who received but twenty-eight votes. On the Chicago Terminal division, northwestern region, the Brotherhood received 495 votes but committeemen were declared elected who received respectively 105, 83 and 76 votes (Labor Board decision No. 220, Exhibit H).

The defendants, officers of the System and of its (77)
several Regions, in pursuance of the unlawful object of said conspiracy, proceeded to meet with the persons declared by them to have been designated as representatives of clerical and station employees of the eastern regions, in meetings purporting to be conferences within the meaning of Section 301, held in Philadelphia, on or about the fifth day of July, 1921, and in regard to other regions in Pittsburgh, Chicago, and St. Louis on or about the said date.

Such meetings were not in truth or in fact such (78)
conferences for the reason that the persons purporting to represent the body of clerical and station employees of said regions did not in fact represent them, but were in effect chosen and designated by the defendants to represent said employees.

Nevertheless, the said defendants in pursuance of (79)
the unlawful object of said conspiracy, then and there persuaded the purported representatives to agree to certain "regulations" embodying rules and working conditions proposed by the management. The said defendants and the said purported representatives then and there proceeded to execute the said regulations as agreements purporting to have been entered into between the general manager of each region and committees purporting to represent the clerical employees of each region. "Regulations" embodying rules for the government of station and other employees were similarly executed between the general managers of the several regions and committees purporting to represent station and other employees

(miscellaneous forces). The management then, in pursuance of the unlawful object of their said conspiracy, declared these regulations to be the basis of the employment contracts between the Pennsylvania Railroad System and the clerical and station employees of the several regions and put them into effect as having been agreed to by said employees through their representatives.

(80) In truth and in fact, however, the purported representatives did not represent the body of clerical or station employees but were in fact to all intents and purposes selected by the management as representatives of said employees. In truth and in fact the "regulations" in effect have not been agreed to by such employees through representatives.

(81) Shortly prior to or about August 1, 1921, the defendants, the officers of the System and Regions, in pursuance of their unlawful conspiracy met with the said persons declared by them to have been elected as representatives of clerical employees of the Eastern Region and persuaded these persons to agree to the establishment of an association to be known as the "Clerk's Association of the Operating Department of the Pennsylvania Railroad System Eastern Region," and on about the same time in Pittsburgh, Altoona, Chicago, and St. Louis, persuaded the purported representatives of employees of the other regions to agree to the establishment of similar organizations for the several other regions.

(82) The defendants, on or about the same time and at said places, in pursuance of their unlawful conspiracy, met with the persons declared by them to be elected representatives of station and other employees of the several regions and persuaded these persons to agree to the establishment of associations known as the "Pennsylvania System Forces' Association of the

Eastern Region" and of and for the several other regions of the Pennsylvania System.

The said associations have no dues or other provi- (83)
sions for the financial support of their officers, agents or representatives designated to utilize Title III or otherwise.

The defendants, the officers of the System and its (84)
Regions, in pursuance of their unlawful plan and conspiracy, unlawfully paid with funds of the defendant corporation, from time to time, persons purporting to act as representatives for their time occupied with the business of such purported representation, and have since and are now paying such persons in that regard and are paying with funds of the defendant corporation the expenses of the said associations, in pursuance of their unlawful plan and conspiracy.

At various times, shortly prior to and since Au- (85)
gust 1, 1921, the said defendants have published at the expense of the Pennsylvania Railroad Company "By-laws" of the "Clerks' Association" and "Miscellaneous Forces' Association" of the several regions.

The said by-laws provide that controversies be- (86)
tween the managements and employees of these classes shall be handled by the several committees established thereunder up to the "joint regional committees." These joint regional committees are composed one-half of officers of the company and one-half of so-called representatives of employees. It is made the function of the joint regional committees to decide controversies between management and employees of the classes concerned which remain undecided by subordinate committees. A two-thirds vote of the members of the joint regional committee is necessary to reach a decision. One-half of the members of the joint regional committee are officers of the Pennsylvania System.

(87) The management thus is enabled to prevent a reference of any dispute to the Labor Board by employees' "representatives" although all "representatives" of the employees, members of the joint regional committee, vote for said reference.

(88) These provisions preventing the said associations from making application to the Labor Board for its decision on an employee position not agreed to by the joint regional committee are still in effect and so interwoven with said by-laws as a whole to make it impossible, consistent with the intent of the management and of the committeemen of said associations who have agreed to said by-laws, to strike out said provisions.

(89) The said provisions are of themselves unlawful, being inconsistent with Title III and destructive of its intent, and render the said by-laws unlawful. The said by-laws are also unlawful because adopted and established as means in pursuance of said unlawful object and conspiracy of the defendants.

(90) Copies of the "by-laws" in effect on the Eastern Region, which are substantially identical with by-laws in effect in the other regions, are annexed marked "Exhibits I and J."

(91) (Clerk's Association By-Laws, Art. 10, Art. 8, Art. 13.)

(92) (Miscellaneous Forces' By-Laws, Art. 10, Art. 8, Art. 12.)

(93) The defendants, officers of the System and of the Regions, at all times since April 15, 1921, have refused and are now refusing to confer with the complainant The System Board of Adjustment as representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, and have required and require that all matters of controversy between the management and the employees be handled through said associations.

Said associations, as stated, have no provisions for dues or other means of support except as funds of the Pennsylvania System may be provided for their use by the officers of the System, and said associations are unable to act toward the utilization of Title III except as the management may permit. By the establishment of these associations and the exclusive dealing with them by defendants, officers of the System, action by clerical and station employees, members or non-members of said associations toward the utilization of Title III is obstructed and defeated. (94)

The defendants, officers of the System, intend to continue expending large amounts of funds of the Pennsylvania Railroad Company in compensating the said purported representatives for time employed in that regard, in paying the expenses of said association and in paying the expense of elections to elect "representatives," all in pursuance of the unlawful object of said conspiracy and as means adopted and applied to accomplish its said unlawful object. (95)

On August 3, 1921, the Labor Board by its decision No. 220, a copy of which is annexed marked "Exhibit H," held the election of May 29, 1921, illegal and void and alleged agreements ("Regulations") embodying the rules and working conditions negotiated by the defendants with persons falsely alleged to be representatives of the clerical and station employees (miscellaneous forces) also void and of no effect. (96)

The continued refusal of the defendants, officers of the System, to permit clerical and station employees to designate an organization as their representative at the elections held by the defendants and their continued frustration of the most practicable and convenient method whereby said employees can act toward the utilization of Title III, and their continued refusal to confer with the said System Board of Adjustment as representatives of such employees or as representative of the members of the Brotherhood of Railway (97)

Clerks, employees of the System, and the requirement imposed by the defendants that all subjects of dispute be handled pursuant to the by-laws of regional associations, have had the effect of influencing large numbers of clerical and station employees into voting at the elections conducted by the said defendants and into joining the associations set up by them. These clerical and station employees have abandoned hope of the free exercise of the rights afforded them by Title III and are persuaded that the defendants have succeeded and will succeed in preventing them from utilizing the remedy and procedure afforded them by Title III and are convinced that their rights under Title III have been rendered by the defendants of no avail, and that they may receive some benefits by participation in said elections and through the associations established by the said defendants.

(98) Subordinate officials of the Pennsylvania Railroad System have, from time to time, coerced, and unless restrained, will continue to coerce clerical and station employees (miscellaneous forces) into accepting and signing for ballots for elections for committeemen of regional associations and into becoming members of said associations by threatening employees with discharge, unless such employees accept and sign for said ballots and become members of the said association. Affidavits setting out numerous instances of such coercion were submitted to the Railroad Labor Board in Docket No. 405, May, 1923 (pp. 108 to 144). A copy of said proceedings of the Labor Board, Docket No. 405, certified by the secretary of the said Labor Board, is annexed hereto marked "Exhibit K."

(99) The said unlawful acts of the defendants have succeeded in detaching from membership in the Brotherhood of Railway Clerks a considerable number of its former members, and will continue, if unrestrained, to detach others. The said unlawful acts are promoting,

and if unrestrained, will continue to promote the object of said conspiracy of defendants, officers of the System, by reducing the ability of the clerical and station employees to act toward the utilization of the remedy and procedure afforded them by Title III; said Brotherhood of Railway Clerks being the only organization available to clerical and station employees equipped with machinery necessary for the utilization of said title.

(100) The said defendants, officers of the System, threaten to apply at future elections the said unlawful election rules applied at the 1921 election and threaten to continue to maintain in effect the said regulations as having been entered into with persons representing the said clerical and station employees, and to continue to require that all subjects of dispute shall be handled through said associations, and to continue to refuse to confer with the System Board of Adjustment as representative of the clerical and station employees or of its own membership.

(101) The members of the complainant organizations employees of the Pennsylvania System, have no adequate remedy at law for the aforesaid unlawful and threatened acts of the defendants and can have relief only in equity. If each such member should bring an action at law, a multiplicity of suits would result.

(102) The said acts, which the defendants threaten to continue, are doing irreparable injury to the rights of the said members of the Brotherhood of Railway Clerks of the Pennsylvania System and to the rights of the station and other employees of the Pennsylvania System established in them by Title III, and are destroying the remedy and procedure afforded them by said title, and are injuring the property rights of said Brotherhood and System Board of Adjustment by reducing their membership and their income from

members, employees of the Pennsylvania Railroad System.

(103) Unless the Court will grant the relief hereinafter prayed, including the preliminary injunction prayed for, there is imminent danger that the defendants will succeed in attaining the end and purpose of their said conspiracy and that the utilization of Title III and the purpose of Congress in enacting Title III will be defeated with regard to the clerical and station employees of the Pennsylvania System, and that the income of the said Brotherhood of Railway Clerks and said System Board of Adjustment will be further reduced in large amounts.

(104) The amount in controversy exceeds $3000, exclusive of interest and costs.

(105) WHEREFORE, the complainant prays that this Court issue a preliminary injunction enjoining the Pennsylvania Railroad Company and its officers from:

(106) 1. Paying compensation to any officer or committeeman of the Pennsylvania Railroad System Clerks' Associations or of the Miscellaneous Forces' Associations of the Operating Departments of the Eastern, Central, Northwestern and Southwestern Regions, of the System General Office and of the Altoona Works, for time occupied with the business of said Association or for time occupied with the business of representing employees of the Pennsylvania System, and from expending funds of the Pennsylvania Railroad Company or System to pay any expenses of any of said Associations or any expenses of any of their officers or committeemen, or to pay for publication or circulation of any By-laws of said associations or of any proceedings thereof, and from permitting any officer of the Pennsylvania Railroad Company or System to serve as a member of the Joint Regional Committee of any of said associations.

2. From controlling or attempting to control or (107)
to affect through regional joint committees or otherwise, the authorization or designation of representatives by the clerical or by the station employees (miscellaneous forces) of the Pennsylvania System to confer with the representatives of said System, and from establishing or continuing in effect election regions or districts or rules to govern any election for representatives of clerical or station employees (miscellaneous forces) of the Pennsylvania System and from regulating, conducting or participating in the conduct of elections to determine such representatives, whether as members of regional joint committees of clerical or of miscellaneous forces' associations or otherwise, and from printing or distributing ballots for such election and from paying with funds of the Pennsylvania Railroad Company or System for the printing or distribution of ballots, rules or regulations to control or govern the conduct of such election, except in such manner and to such extent as the Railroad Labor Board has decided or may hereafter decide to be just and reasonable.

3. Permitting any officer or subordinate official of (108)
the Pennsylvania Railroad Company or System to coerce clerical or station employees (miscellaneous forces) into accepting or signing for any ballots for voting at any election for committeemen of clerical or miscellaneous forces' associations or into joining any such associations by threat of discharge or threat of any other disadvantage to said employees in case of their refusal to accept or sign for said ballots or to become members of said associations.

4. From conferring with or agreeing with the com- (109)
mitteemen of said associations or any of them as the designated and authorized representatives of the body

or class of clerical or of station employees (miscellaneous forces) of any region of the System or of any district of any region.

(110) 5. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, on any dispute in which said members are directly interested, and from omitting and refusing to decide such dispute in conference if possible.

(111) 6. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the clerical forces of the Pennsylvania System or of the Northwestern or of the Southwestern regions on any dispute in which said clerical forces or any of them are directly interested, and from omitting and refusing to decide such disputes in such conference if possible.

(112) 7. From refusing and omitting to confer with the System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the station (miscellaneous forces) of the Pennsylvania System or of the Central Northwestern or Southwestern Regions on any dispute in which said station or miscellaneous forces or any of them are directly interested and from omitting and refusing to decide such disputes in conference if possible.

(113) 8. From representing that the "regulations" in effect for the government of clerical forces under the

jurisdiction of general and division superintendents, and from representing that "regulations" in effect for the government of office, station, warehouse, storehouse and elevator forces, and engine and train crew callers, excluding clerical and supervisory forces, have been agreed to for or on behalf of such clerical or for and on behalf of such miscellaneous forces, and from publishing or circulating printed "regulations" wherein the words "for the employees" and the words "Committee representing clerical forces" or words "Committee representing office, etc., forces" or words of like import, stating or suggesting that said regulations have been agreed to by said classes of employees through representatives, are appended to such regulations or immediately follow the names of the chairmen of the associations of clerical or of miscellaneous forces and requiring the defendant corporation to cancel and expunge or to announce the cancellation of such words on all copies of said regulations within its control.

9. The complainant further prays for a permanent injunction in like terms as the preliminary injunction prayed for, and for process, and for such other and further relief as it may be entitled to in equity. (114)

HENRY T. HUNT,
ARLEN G. SWIGER,
Attorneys for Complainants.

ROBERT J. STERRETT,
Of Counsel.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } *ss.:*

C. H. FENSTERMACHER, being duly sworn, deposes and says:

That he is an officer of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the complainant and orator in the foregoing bill, to wit: the Chairman of the said Board; that he has read the foregoing bill and knows the contents thereof and that the facts therein set forth are true to the best of his knowledge, information and belief; that he is duly authorized by the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the complainant and orator in the foregoing bill, to make this affidavit of verification.

Sworn to and subscribed before me this eighteenth day of October, 1923. } C. H. FENSTERMACHER.

JACOB CHAITKIN,
(Seal) *Notary Public.*
New York County.
N. Y. Co. Clk.'s No. 452.
N. Y. R. Clk.'s No. 4369.
Commission expires March 30, 1924.

ANSWER OF THE DEFENDANTS.
(Filed November 15, 1923.)

To the Honorable Judges of the District Court of the United States, for the Eastern District of Pennsylvania:

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, C. S. Krick, M. W. Clement, T. B. Hamilton and I. W. Geer, the defendants herein and each of them, without waiving any objections and exceptions to the bill and to all the averments therein set forth, specifically aver:

That the complainant has no authority or legal power to file the bill.

That there is no right or cause of action in equity disclosed by the bill and the averments therein.

That no conspiracy is disclosed by the bill and the averments therein.

That no remedy in equity exists for or arises from the charge or averments of conspiracy upon the facts set out in the bill.

That the complainant discloses in its bill no ground for the relief therein prayed.

That there is an adequate remedy at law for the acts alleged by the complainant in its bill to have been done by the defendants, and without waiving any of the foregoing averments, and especially insisting thereon with like effect as if they were asserted in a plea of abatement, a motion to dismiss the bill or by a demurrer to the bill, the defendants make answer to the averments of the several paragraphs therein, or so much thereof as they are advised they are required to make answer to, as follows:

First.—Defendants have no knowledge or information as to the averments of the first paragraph of the

bill, and so far as they are material demand proof thereof.

Second.—The defendants admit the averments of the second paragraph of the bill, except the averment in regard to the control by The Pennsylvania Railroad Company through stock ownership, leases and otherwise, of a number of railroad carriers in the several states, which is too vague to make specific answer thereto, while admitting that it has ownership of railroads in some states and is the lessee of railways in other states, and except that the defendant, Elisha Lee, who was at the time of the filing of the bill, vice-president of the Eastern Region of the Pennsylvania Railroad and a citizen and resident of the Eastern District of Pennsylvania, is now vice-president of the Central Region of the Pennsylvania Railroad and a citizen and resident of the Western District of Pennsylvania; that likewise C. S. Krick, who was at the time of the filing of the bill, general manager of the Eastern Region of the Pennsylvania Railroad Company, is now vice-president thereof.

Third.—Defendants deny the allegations of the third paragraph of the bill, save that the action set out in the bill involves an alleged controversy arising under the laws of the United States.

Fourth.—In answer to the fourth paragraph of the bill and the several sub-sections thereof the defendants say: The defendants admit the allegations in sub-sections 23 to 37, inclusive.

The defendants deny all of the allegations in sub-section 38.

The defendants deny all of the allegations in sub-section 39, and specifically deny that they or any of them have combined or conspired in any manner whatsoever to do any of the matters or things therein

averred, and specifically deny any unlawful intent or purpose with the object of defeating any of the rights of the employees of the defendant railroad company, or to compass or accomplish the same as averred in sub-section 39.

The defendants deny all of the averments of sub-sections 41 (*a*), 42, 43 (*b*), 44 and 45, and all deductions and inferences stated therein, and specifically deny that there was any unlawful plan or scheme on their part.

In answer to sub-section 46 (*c*), the defendants aver that the officers of the defendant, The Pennsylvania Railroad Company, after interviews and consultations with certain of its employees of the classes referred to in the bill proceeded to divide such employees into regions and districts corresponding to the then established operating regions and districts of the system and the several departments in the general offices at Philadelphia and Pittsburgh, and to arrange for the election by secret ballot of persons to represent such classes in said regions, districts and offices. The defendant, The Pennsylvania Railroad Company, required that the representatives thus to be voted for should be individual employees in the regions, districts or offices from which representatives were to be chosen, and an employee was not disqualified from acting as such representative because he belonged to said Brotherhood of Railway and Steamship Clerks or any other labor organization. The rules of election provided that the individual employees receiving the highest number of votes cast would be recognized as the duly elected representatives of the employees.

The general plan of election and qualification of candidates and voters was carefully and thoroughly explained to a committee representing the Brotherhood of Railway and Steamship Clerks at a conference between said committee and officers of the defendant railroad company, and the members of said organization,

provided they were employees of the company, were afforded every opportunity to vote at said election.

The defendants deny the averments of sub-sections 47, 48 (*d*), 49, 50 (*e*), 51, 52 (*f*), 53 (*g*), 54, 55 and 56, not only the allegations of fact as set out therein, but also the inferences attempted to be drawn from such allegations.

Defendants admit the allegations contained in sub-sections 57 and 58.

Defendants deny that complainant was at all times diligent in support of its rights as averred in sub-section 59, but on the other hand, defendants aver that complainant has wholly misconceived its rights, as established by Title III of the Transportation Act of 1920.

The defendants admit the averments of sub-section 60.

The defendant railroad company held an election as averred in sub-section 61, but specifically denies that same was contrary to Title III or that it was unlawful in any respect whatsoever, as averred in sub-sections 62, 63, 64, 65, 66 and 67 (1), (2), (3), (4) and (5), all of which averments the defendants deny. The defendants, while admitting that an election was held as averred in sub-sections 68 and 69, deny all the other averments thereof and all inferences sought thereby to be drawn from such averments.

The defendants admit all the averments of sub sections 70 to 76, inclusive, except such as state the reasons why any members of the Brotherhood or other employees refrained from voting, of which the defendants have no knowledge, and they deny the averments that any votes which were legally cast were thrown out or declared to be void. The defendants find minor inaccuracies in the recital of the number of votes cast as averred in these sub-sections, but do not make specific denial thereof as they are not of material

amounts. The defendants aver that in the two or more elections held subsequent to the election described in the sub-sections of the fourth paragraph of the bill under the said rules and regulations promulgated by the defendant, The Pennsylvania Railroad Company, a very much greater number of the employees entitled to vote in said elections did vote therein, and that the method of selection of representatives thus established by the defendant, The Pennsylvania Railroad Company, was thereby endorsed and supported by a majority of the employees in the said classes.

In answer to sub-sections 77, 78, 79, 80, 81 and 82, the defendants admit that they held meetings and conferences with the representatives of the clerical and station employees and aver that said representatives were duly and legally chosen and were duly and legally empowered to confer with the defendants in such matters. The defendants, however, specifically deny that such meetings, conferences and discussions were unlawful in any respect, and that they were in pursuance of any unlawful conspiracy and combination.

The defendants admit the averments in sub-section 83, so far as they are informed and believe.

The defendants admit that payments were made to the representatives, as averred in sub-section 84, but deny that such payments were in pursuance of any unlawful plan or any conspiracy, specifically averring that the payments were proper and lawful.

The defendants admit the averments in sub-sections 85 and 86. They deny the inferences drawn in sub-sections 87, 88 and 89. They admit the averments of sub-sections 90, 91, 92 and 93. They deny the averments in sub-sections 94 and 95, and the inferences and deductions therefrom stated therein.

The defendants admit the averments of sub-section 96. They deny the averments of sub-sections 97, 98 and 99, except as to the status of membership in the

Brotherhood of Railway Clerks, about which defendants are uninformed, admitting, however, the filing of affidavits as set out in sub-section 98, but averring that such affidavits do not correctly state the facts purported to be stated in them.

In answer to sub-section 100, the defendants admit that they propose to continue the application of the rules promulgated for electing representatives, specifically denying, however, that the said rules and regulations are unlawful and that the elections held in pursuance thereof are unlawful, and aver that The Pennsylvania Railroad Company and its officers had ample power and authority to make such rules and regulations in accordance with conferences with its employees which have been adopted and followed by a large majority of the employees at elections subsequently conducted as hereinbefore set out.

The defendants deny that the complainant is without adequate remedy at law, as averred in sub-section 101, and can have relief only in equity under the averments of the bill, and that the allegation of multiplicity of suits affords adequate ground for this action, as set out in the bill. And the defendants further deny that as averred in sub-sections 102 and 103 the defendants have committed or propose to commit any acts which have done or will do irreparable injury to the rights of the members of the Brotherhood of Railway Clerks of the Pennsylvania System and to the rights of the station and other employees of the Pennsylvania System or any injury to the property rights of said Brotherhood and System Board of Adjustment for which they are entitled to any relief as prayed for in the bill, and that the defendants engaged or propose to engage in any conspiracy defeating the rights of their station and clerical employees, in any way or manner, as alleged in the bill; and the defendants deny all other allegations and all other inferences sought to be drawn

therefrom in said fourth paragraph of the bill not hereinbefore specifically denied.

Wherefore the defendants pray that the bill of complaint be dismissed with their proper costs.

JOHN HAMPTON BARNES,
Attorney for Defendants.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

C. S. Krick, being duly sworn according to law, deposes and says that he is vice-president of The Pennsylvania Railroad Company, one of the defendants named in the foregoing answer, and that the facts set forth therein are true and correct.

Sworn to and subscribed before me this 15th day of November, 1923. } C. S. KRICK.

N. H. ZEHENDER,
(Seal) *Notary Public.*
Commission expires March 7, 1925.

EXHIBIT "A."
(Filed October 19, 1923.)

CONSTITUTION OF THE GRAND LODGE

STATUTES

For the Government of Lodges and

PROTECTIVE LAWS

of the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES.

Revised and Amended at Dallas, Texas, May, 1922.
In Effect on and after July 1, 1922.
(Union Label, Allied Printing Trades Council, Cincinnati, O., 74.)

PREAMBLE.

Unity guided by intelligence is a bulwark of strength that can withstand all attacks. Without intelligent organization, we can not acquire the discipline which enables us to act together, concentrate our strength and direct our efforts toward a common purpose.

Therefore, for the purpose of promoting such unity of action, for our mutual protection and to promote the general welfare of our crafts, the organization known as the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes has been established.

The Grand Lodge, possessing original and exclusive jurisdiction, is the source of all true and lawful authority of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and is the legislative and judicial head of the Brotherhood; is vested with full power and authority to enforce upon its membership a strict adherence

to the laws and regulations as stipulated herein and which are hereby declared to be the Constitution of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

Constitution of the Grand Lodge

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

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Article I.

Name.

This International Organization shall be known by the name of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

Article II.

Sovereign Body.

Section 1. The sovereign body of the Brotherhood shall be called the Grand Lodge and it shall have absolute and exclusive jurisdiction over all matters pertaining to the Brotherhood; it is the true and legitimate source of all authority, and the final resort of appeal, and there is no power vested in any officer, committee or body of members to repeal, alter, or change its laws and its decisions, except by referendum vote as hereinafter provided.

Section 2. It shall establish lodges throughout the states, territories, provinces or counties of the United States, Canada and Mexico.

Section 3. It shall establish a Ritual with written and unwritten work, and shall change, alter

and amend the same when deemed necessary and provide for its security and the uniform dissemination of its teachings.

SECTION 4. It shall print and furnish all Charters, Rituals, Cards and forms necessary to uniformity throughout the Brotherhood. It shall also print in French, Spanish or other languages necessary, a supply of Constitutions, Rituals, Petitions and Obligation Blanks, and other necessary forms.

SECTION 5. It shall provide a revenue to meet its expenses by per capita tax on the membership, and by fees, dues and assessments and will furnish supplies, such as Constitutions, blank reports to be made to the Grand Lodge and application blanks for membership, free of charge to lodges.

ARTICLE III.

Grand Lodge.

SECTION 1. The Grand Lodge shall be composed of the Grand President, Grand Secretary-Treasurer, a National Legislative Counsel, a Senior Vice Grand President, and six (6) Vice Grand Presidents, Editor of the Official Journal, a Grand Executive Board consisting of five (5) members, and delegates as hereinafter provided, all of whom shall be entitled to a voice and a vote on all matters coming before the Sovereign Body.

SECTION 2. There shall be elected one (1) Vice Grand President and one (1) member of the Grand Executive Board from the express employes; the balance of the Vice Grand Presidents and members of the Grand Executive Board shall be elected from the membership at large, exclusive of the express employes.

SECTION 3. Each Lodge of the Brotherhood, organized under a charter granted by the Grand Lodge, shall be entitled to representation on the following basis: One (1) delegate from each lodge with voting power of the entire membership. The number of members of a lodge shall be computed as those in good standing at the end of the quarter preceding the session of the Grand Lodge. Each lodge of one hundred (100) members or less shall be entitled to one (1) representative and one (1) vote at each Convention. The voting strength of lodges having more than one hundred (100) members shall be one (1) vote for each one hundred (100) members, or major fraction thereof.

SECTION 4. Any ballot which does not carry a vote for at least four (4) Vice Grand Presidents and three (3) members of the Grand Executive Board shall be declared illegal; in case no Vice Grand President or member of the Grand Executive Board is elected from the express employes, the respective candidate from the express employes receiving the highest number of votes shall be declared elected.

SECTION 5. The following officers shall be appointed by the Grand President, with the consent of the Convention: Grand Chaplain, Grand Sergeant-at-Arms, Grand Inner and Outer Guards.

ARTICLE IV.

Representation to Grand Lodge Convention.

SECTION 1. No members shall be eligible for election as delegate or alternate to the Grand Lodge Convention unless they shall have been members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and

Station Employes, in good standing, continuously for the three (3) years immediately preceding the date of their election, and shall be members of the lodge which they seek to represent. They must be actually employed in railroad, steamship or express service, at the time of their election and shall have been so employed continuously for at least sixty (60) days prior to the time of election, provided that members exclusively employed by lodges, boards of adjustment, or the Grand Lodge, shall be eligible to election as delegates or alternates, and provided further, that the three (3) years provision of this section shall not apply to members of new lodges for the first three (3) years of their existence. No member shall be eligible for election as delegate or alternate until sixty (60) days after admission into the lodge, and shall be elected sixty (60) days previous to date of convening of Grand Lodge.

SECTION 2. Representatives must produce certificate of election under the seal of their lodge, with membership cards or receipts showing all dues and assessments paid up to and including the month in which the Convention is held, before being seated.

SECTION 3. Delegates to the Grand Lodge Convention shall receive as compensation for their services, while attending each regular session of the Grand Lodge, four cents (4c) per mile mileage each, going to and returning from the meeting place of said Convention by the most direct route, and an allowance of ten ($10.00) dollars per diem each, including Sunday, for each day's session of the Grand Lodge attended by them. Such mileage and per diem allowance shall be paid out of the Convention Fund.

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Article XXI.

Protective Fund.

Section 1. There shall be maintained as an auxiliary to the efficiency of the Brotherhood, a Protective Fund, and the amount as provided for in Article XV shall be assessed against each member and subject to the same conditions and penalties as prescribed for in the section for non-payment of dues. The fund thus created shall be known as the Protective Fund to be used exclusively as provided for in Article VIII. The Grand Secretary-Treasurer shall be the custodian of the Protective Fund and should an emergency arise to necessitate the use of this fund and the amount on hand prove insufficient in such an emergency, extra assessments not to exceed one ($1.00) dollar each per month may be levied and collected in such installments as may be required. Any member failing or declining to pay his assessments shall stand suspended and shall be reported the same as for non-payment of dues.

Article XXXI.

Insurance.

Section 1. The Grand Lodge shall create, establish and maintain a death benefit department, which shall be under the administration of the Grand Executive Board (and Grand Secretary-Treasurer). The death benefit department fund shall be created by levying an assessment against all members in good standing as of September 1st, 1922, to be paid by them as a voluntary contribution to this fund. Thereafter there shall be set aside and credited to this fund twenty-five (25c) cents from the initiation fee of each new member.

For the purpose of maintaining this fund and the department there shall be also set aside and credited to the fund thirty cents per quarter taken from the dues and assessments to the Grand Lodge. This shall not be construed as an increase in Grand Lodge dues and assessments, but as a voluntary contribution for the benefit of members of the Brotherhood as hereinafter provided; nor shall this in any way create a lien or claim against the Brotherhood, nor shall the Brotherhood be obligated in any way to carry out these several provisions beyond the extent of this said fund. All claims arising hereunder are to be passed upon by the Grand Executive Board and paid by the Grand Secretary-Treasurer upon proper authority from said Board. The Board shall have authority to deny payment of any and all claims hereunder and no member is guaranteed that such provisions herein made will be fulfilled, as no obligation rests upon the Brotherhood or Grand Executive Board by reason of the creation and maintenance of the Death Benefit Department beyond the extent of this said fund.

SECTION 2. Immediately, upon September 1, 1922, or as soon thereafter as possible, the secretaries of local lodges will furnish the Grand Secretary-Treasurer with a certificate of each member in good standing, showing the number of years that said member has been in good standing with the Brotherhood prior to that date, provided said member desires to avail himself or herself of the accrued benefits accumulated for continuous membership as set forth in Section 4. The secretaries will forward such certificates to the Grand Secretary-Treasurer together with an amount equal to ten (10c) cents per month for the number of

months that the member has been in good standing prior to September 1, 1922. Thereafter a similar certificate will be furnished the Grand Secretary-Treasurer for each new member admitted, together with other reports and initiation fee. The Grand Executive Board will keep a roster of all members, together with a full and complete record of their continuity of membership, which must be furnished the Grand Executive Board at the end of each month by local secretaries, and quarterly by the Grand Secretary-Treasurer. Members who fail to comply with Section 2 will lose their continuity of membership prior to September 1, 1922, and will begin as new members in the Death Benefit Department as of that date.

SECTION 3. Each member will designate, on proper certificate, to whom he wishes the benefits hereinunder paid in event of his death, and each member must notify the secretary of his local lodge of any changes in such proposed beneficiaries or change of residence. In the event such member discontinues active service with a transportation company and desires to continue his membership with the Brotherhood, he shall so notify the local secretary, who will thereafter assess against such member local and Grand Lodge dues as provided in Article XV.

SECTION 4. The Grand Executive Board, through the Death Benefit Department, will pay to the designated beneficiary of members the amounts herein set forth and under the conditions named:

For continuous membership of—

One year and less than two years...	$ 100.00
Two years and less than three years..	150.00
Three years and less than four years.	200.00
Four years and less than five years..	300.00

Five years and less than six years...	$ 400.00
Six years and less than seven years..	500.00
Seven years and less than eight years	600.00
Eight years and less than nine years.	700.00
Nine years and less than ten years..	800.00
Ten years and less than fifteen years.	1,000.00
Fifteen years or more.....	1,500.00

SECTION 5. A member, to secure said benefits, must have been continuously a member of this Brotherhood in good standing up to and within thirty days of date of death. Proof of death must be furnished by the secretary of the local lodge by surrender of doctor's certificate, certificate of membership and by certification to the Grand Executive Board.

SECTION 6. The Grand Executive Board shall establish such rules as may be necessary for the proper administration of this department.

STATUTES

FOR THE

GOVERNMENT OF LODGES UNDER THE JURISDICTION OF THE GRAND LODGE OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES.

PREAMBLE.

For the purpose of effecting uniformity in the administration of privileges and benefits of its members, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes ordains the following Constitution for the government of subordinate lodges.

ARTICLE I.

Charters.

SECTION 1. This Lodge shall be known as ..... Lodge, No. ..... Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. Where forty or less members have been reported to the Grand Lodge at the preceding quarter, no lodge can voluntarily surrender its charter or dissolve so long as five members in good standing object thereto.

ARTICLE II.

Membership.

SECTION 1. All white persons, male or female, of good moral character, who have had actual experience as clerks or other office employes, freight handlers, ticket sellers, baggagemen or other station employes; train and engine crew dispatchers, and, or, callers; storehouse or storeroom employes; and, or, express employes, in the service of railroad, steamship, express or other transportation companies, and who at the time of making application are in the employ of such company (except employes at ocean and Great Lake ports handling freight between marine warehouses and deep water vessels and between railroad cars and deep water vessels, but not including ore dock employes at Great Lake ports), shall be eligible to membership.

SECTION 2. All railroad, steamship, express or other transportation company employes who perform services in the several classes specified in the above section or who do work of a nature pertaining to the duties of those specified in said section

shall be eligible to membership in this Brotherhood, regardless of the classification by their employers.

SECTION 3. No officer of this Brotherhood shall hold membership in any other labor organization, federation or alliance of Railway employes admitting membership as described by Section 1 of this Article.

SECTION 4. Applications for membership in this Brotherhood shall be made in writing upon one of the forms furnished for that purpose and shall be signed by the applicant and recommended by a member in good standing.

SECTION 5. Members shall not propose for membership persons whom they do not know to be favorable to the principles of the Brotherhood.

SECTION 6. All applications for membership shall be referred to a committee of three for in- one of the forms furnished for that purpose and next regular meeting, and the candidate shall be balloted for with ball ballots, and if not more than two black balls appear against him, he shall be elected, but if three or more appear he shall be rejected and so declared. If rejected the initiation fee shall be returned to the applicant.

SECTION 7. Where applicants are so located that they cannot attend meetings, the Grand President may upon application from the Chairman of the Board of Adjustment or President of any lodge, grant dispensation to such chairman or president to deputize some member to obligate such candidates, and instruct them in the secret work and in special cases may allow it to be done by mail.

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ARTICLE V.

Fees and Dues.

SECTION 1. The fees and dues of lodges shall not be less than five dollars ($5.00) for initiation and such dues as may be determined upon by the lodge, provided the minimum amount charged shall be not less than twelve ($12.00) dollars per annum.

SECTION 2. In case of extended sickness or unavoidable non-employment of a member, a lodge may by a majority vote waive the dues and assessments of such member.

SECTION 3. Members on strike over two weeks and who have not secured other employment shall be exempt from payment of dues for the following and succeeding months in which strike was called until strike is settled, unless they secure other employment.

SECTION 4. The regular quarterly terms shall commence with the first day of January, April July and October of each year.

SECTION 5. When members of any lodge are three months in arrears for dues, assessments or other indebtedness, the Secretary shall report same to the lodge, and unless it is otherwise directed, such members shall be suspended, having first been notified that such action will be taken, a record of which shall be made upon the minutes. In order to make it effective, the lodge must formally declare such suspension.

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Protective Laws
of the
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

Section 1. Local lodges shall elect a protective committee of three or more members for each division or system represented in the lodge, by three or more members from general offices, transportation, operating, mechanical or other departments in service on the division represented. A member who holds an official position with a railway, steamship, express or other transportation company shall not be eligible to serve as chairman.

Section 2. Said committee shall be elected triennially at the last regular meeting in December, subject to recall at any time by 60 per cent. of the membership in good standing.

Section 3. The chairman of the committee shall be elected by direct vote of the lodge and he shall immediately name one of the other elected members of the committee to act as secretary of same. The secretary of the lodge shall notify the Grand Secretary-Treasurer of such election.

Section 4. Vacancies occurring on the local protective committee shall be filled by the lodge as soon as possible after they have been declared.

Section 5. Members having grievances shall present the same in writing to their Local Protective Committee. If in the opinion of the Committee, the grievance requires immediate action, such action may be taken without such grievance being formally approved by the lodge. Otherwise

it shall be placed before the lodge at their next meeting, by the Chairman or Secretary of the Committee for consideration and action. Should the grievance be sustained by a majority vote of the members present, it shall be referred back to the Committee for adjustment with the proper officials. Should the Committee fail to secure a satisfactory adjustment, it shall refer the grievance to the Chairman of the Division Protective Committee, or on systems where no Division Protective Committees have been established, to the Board of Adjustment, with a full and complete statement of facts and all papers pertaining thereto.

SECTION 6. No grievance originating prior to the time the aggrieved became a member of the Brotherhood or from a member who is in arrears for more than one month's dues and assessments shall be considered.

SECTION 7. Division protective committees shall be formed on all divisions of the systems, and shall consist of the chairmen of the local protective committees of the lodges on such division, including general and mechanical or other department lodges, which committee shall, before the first of February next following their election, meet at some convenient point on the division and elect a chairman, vice-chairman and secretary; provided, that on divisions where only one lodge exists, the local protective committee shall act as the division protective committee, and the chairman thereof as chairman of the said division protective committee until such time as other lodges may be established on the division.

SECTION 8. Division Protective Committees shall receive, consider, and endeavor to adjust with

the proper officials of the division, all grievances properly referred to them by the local protective committees. Should they be unable to satisfactorily adjust such grievances, they shall be referred, together with a full statement of facts and all papers relating thereto, to the Board of Adjustment for further action.

SECTION 9. System, District, or Terminal Company Boards of Adjustment may be formed and shall be composed of the Chairman of the Division or Local Protective Committees, and all members thereof shall serve for three (3) years, or until their successors are chosen and qualified. The entire membership of any system, district or terminal company board of adjustment, or any officers or members of the board, are subject to recall, by sixty per cent. of the membership in good standing.

SECTION 10. The officers of a board of adjustment shall be a general chairman, one or more vice or assistant general chairmen, a general secretary and a general treasurer, who shall be elected by the board in such manner as it may determine, and shall be chosen from the members of the board or from the members at large, under the jurisdiction of the board, provided, that if the officers so elected (except the vice general or the assistant general chairman), be from the members of the board, such election shall create a vacancy on the board from the divisions, general offices, and mechanical or other departments, such officers represent, in which case such divisions, general offices and mechanical or other departments shall immediately proceed to fill the vacancy in the manner prescribed in these Protective Laws.

SECTION 11. The office of general secretary and general treasurer may, when it is deemed expedient, be combined under the title of general secretary-treasurer.

SECTION 12. Boards of adjustment shall have authority to levy per capita tax and assessments upon all members employed on the system, district or terminal, under their jurisdiction, in such manner as they may decide, subject to the approval of the Grand President, for the transaction of their business. All expenses incurred by said boards of adjustment or Division Protective Committees shall be paid out of such funds. Boards of adjustment shall notify the Grand President of any lodge becoming in arrears for such per capita tax or assessments for a period of sixty (60) days or more, when, if such arrears are not paid within thirty (30) days, the lodge shall be suspended by the Grand President until such per capita or assessments are paid.

SECTION 13. When a grievance has been legally referred to a Board of Adjustment, its chairman may summon to his assistance such members thereof as he may deem necessary, and advisable, and endeavor to adjust such grievance. Failing to do so, he may summon the entire Board and shall use every available means to reach an amicable adjustment. Should the Board be unsuccessful, it shall notify the Grand President.

SECTION 14. The Grand President, upon receiving such notification shall meet with or deputize a Grand Lodge Officer to meet the said Board of Adjustment, and renew the efforts to amicably adjust the grievance. Failing in this, the Board of Adjustment, with the sanction of the Grand

President or designated Grand Lodge Officer may prepare ballots which concisely state the nature of the grievance or grievances, the efforts made to adjust them, and the results obtained, and submit the question at issue to the entire membership of the system for a referendum vote as to whether or not they will concertedly withdraw from the service of the company until the said grievances are adjusted. If two-thirds of such membership vote in favor of such withdrawal, the board of adjustment, with the sanction of the Grand President and the Grand Lodge Officer in charge, may order a strike of all members under the jurisdiction of the Board of Adjustment.

SECTION 15. The percentage designated in Section 14 shall not apply to members who are affiliated with federations or other organizations; in which case the total percentage necessary to call a strike shall be the same as that required by such federation.

SECTION 16. In taking the votes provided for in Section 14, a specific time for closing the ballot shall be designated, and all members shall be given an equal opportunity to vote.

SECTION 17. Any action taken by the Board of Adjustment in conformity with foregoing sections shall be law to all members on the system, and members disobeying it shall be expelled from the Brotherhood for violation of their obligations.

SECTION 18. The Grand President shall be the recognized leader, and acting in conjunction with the Grand Executive Board of the Grand Lodge, shall appropriate from the protective fund of the Brotherhood such moneys as may be necessary for the successful prosecution of the strike.

SECTION 19. The Grand President, or designated Grand Lodge officer and the Board of Adjustment shall have the authority to terminate a strike, but should there be a difference of opinion either party shall have power to refer it to the Grand Executive Board of the Grand Lodge, which Board shall decide the question, and such decision, when rendered, shall be final.

SECTION 20. If the vote authorizing a strike has been governed by Section 15, Section 19 shall not apply.

SECTION 21. No member of the committee, except the general chairman or a division chairman, shall discuss with any official of the company any matters pertaining to existing grievances, unless at least one other member of said committee be present at such discussion, and any member of the Brotherhood who, having placed grievances in the hands of his lodge, shall personally attempt to adjust same, communicate with or reply to any communications received from any official of the company except by instructions from the proper committee or the Board of Adjustment, shall forfeit all rights to assistance from the Brotherhood in adjusting same.

SECTION 22. Any member or members inciting a strike or participating therein, except as provided for in these laws, shall be expelled. The lodge in whose jurisdiction an unauthorized strike occurs shall within ten (10) days, expel all members who engage in such unauthorized strike. While under charges for engaging in an unauthorized strike, no member shall be granted a transfer or withdrawal card. If within ten (10) days the lodge does not expel the member engaged in such

unlawful strike, its charter may be revoked by the Grand President, who shall transfer all members not so participating to other lodges.

SECTION 23. For the purpose of protecting the interest of the members, defraying the expenses of conducting duly authorized strikes, rendering such financial assistance as may be found advisable to members locked out or summarily dismissed from the service in consequence of their membership or efforts to secure schedules, and defraying the expenses of the Grand Lodge attending efforts to secure schedules, the Grand Executive Board of the Grand Lodge shall continue to maintain the fund known as the Protective Fund of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in which all members shall participate, and which shall be created and maintained as provided for in the Constitution and Laws of the Brotherhood.

SECTION 24. The Grand Secretary-Treasurer shall keep a correct record of all moneys received for this fund, and make such reports thereof as is required by the Constitution and Laws of this Brotherhood.

SECTION 25. Should the fund thus created prove insufficient, the Grand Executive Board of the Grand Lodge may levy such assessments in accordance with the Constitution of the Grand Lodge, as may be required for the protection of members. Members joining after the inauguration of any strike, for which strike assessments are levied, shall be exempt from such assessments.

SECTION 26. No benefits shall be paid under these laws to members until they have been on

strike or locked out for a period of two full weeks, but they shall receive such benefit beginning the third week.

SECTION 27. Striking or locked out members shall be paid pro rata such amount for their relief as may be represented by the amount of the Protective Fund, and as may be derived by assessments provided for in Section 25; and provided further, that such payments shall at no time exceed fifteen ($15.00) dollars per week and shall terminate upon the date strike is declared off. To be entitled to benefits under this section, members shall register personally each day between 9:00 a. m. and 12:00 noon in a register provided for that purpose, and perform such other duties as may be required by the strike committee. The manner and time of registering as hereinbefore provided may be waived in case of a joint strike when concurred in or approved by the Chief Executives of the respective organizations. Then such rules and regulations as may be agreed upon by the joint strike committee shall prevail.

SECTION 28. Striking members securing employment elsewhere during period of such strike or lockout shall be excluded from all strike benefits, must obtain permission from the strike committee before accepting any other employment, and shall be required to pay all assessments under the provisions of Section 25.

SECTION 29. When the members of lodges require financial relief under the provisions of these laws, the secretaries of lodges shall forward to the Grand Secretary-Treasurer, duly signed and under the seal of the lodges involved, and certified to by the board of adjustment, or strike committee, the

payroll provided for in the foregoing section, showing names of members and addresses thereof, engaged in the strike or lockout and who are entitled to pay. The payroll shall be made out in ink and the amount due set opposite the name of each member. The Grand Secretary-Treasurer, by direction of the Grand President and with the approval of the Grand Executive Board of the Grand Lodge, shall draw from said Protective Fund and forward by voucher check covering each member to the secretary of such lodge.

SECTION 30. On receipt of the payrolls and the amount due thereon from the Grand Secretary-Treasurer the secretaries of the lodges shall pay the same to the members entitled thereto, securing their signature to the payroll and return such receipted payrolls to the Grand Secretary-Treasurer. Secretaries of lodges shall keep a correct account of all moneys received and disbursed by them. The bond of the Grand Secretary-Treasurer, as provided for in the Constitution and Laws of the Grand Lodge, shall apply to this Fund.

SECTION 31. Nothing in these laws shall be construed by Grand Lodge officers or others to prevent any Board of Adjustment formulating suitable laws for their own constitution and guidance, which in their opinion are necessary and advisable.

SECTION 32. After adoption, copy of such laws shall be submitted to the Grand President for approval. They shall, if approved by him, become effective from that date, and shall not be printed before being so approved. An official copy signed by the General Chairman and the General Secretary shall be deposited with the Grand President and Grand Secretary-Treasurer.

The undersigned hereby certify that the foregoing Constitution of the Grand Lodge, Statutes for the Government of Lodges and Protective Laws are the true laws of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, as revised and amended by the Eleventh Regular and Third Triennial Convention of the Grand Lodge at Dallas, Texas, May, 1922.

H. D. ULRICH,
Chairman,

J. LOUIE ENGLAND,
Secretary.

F. P. CLEERE,
JOHN FITZGIBBON,
LEWIS W. ENGLISH,
Committee on Legislation.

Approved:
E. H. FITZGERALD,
Grand President.

Attest:
GEO. S. LEWIS,
Grand Secretary-Treasurer.

EXHIBIT "B."
(Filed October 19, 1923.)

BY-LAWS

of the

BOARD OF ADJUSTMENT

of the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

PENNSYLVANIA SYSTEM

(Union Label, Allied Printing Trades Council, Harrisburg, Pa. 8)

1920.

Press of H. J. Kurzenknabe

Harrisburg, Pa.

PREAMBLE.

Unity, guided by intelligence, is a bulwark of strength that can withstand all attacks. Without intelligent organization, we cannot acquire the discipline which enables us to act together, concentrate our strength and direct our efforts towards a common purpose.

Therefore, for the purpose of promoting such unity of action, for our mutual protection and to promote the general welfare of our craft, the organization known as the Board of Adjustment, of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, of the Pennsylvania System, has been established.

By-Laws.

Article I.

Name.

Section 1. This organization shall be known by the name, style and title as the Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes of the Pennsylvania System.

(The words "Board of Adjustment" to be hereinafter designated by the word "Board" and the words "Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes" to be hereinafter designated by the word "Brotherhood".)

Article II.

Officers and Members.

Section 1. This Board shall consist of the following officers: One (1) or more General Chairman, one (1) or more Vice General Chairman (the number of General Chairman or Vice General Chairmen to be determined by the Board), one (1) General Secretary and one (1) General Treasurer, provided that the office of General Secretary and General Treasurer may be consolidated at any time at the discretion of the Board.

Sec. 2. Membership of this Board shall consist of its officers and duly authorized Chairman of Division Protective Committees coming under the jurisdiction of a General Superintendent, and in addition the lodges of the General Offices at Philadelphia, Pa., and Pittsburgh, Pa., together with the lodges in the Superintendent's Terminal Division District at these

two points, shall be entitled to one member each, said members to be known as Division or Assistant General Chairmen.

ARTICLE III.

Time and Place of Meeting.

Section 1. The regular meetings of this Board shall be held on the second (2nd) Wednesday of January and July.

Sec. 2. All regular meetings shall be held in the City of Pittsburgh, Pa., and shall be called to order at 9.30 A. M.

Sec. 3. Special meetings may be called at the request of the General Chairman or General Chairmen, or a majority of the Executive Committee, or by request of one-third (1-3) of the members of the Board, the time, place and purpose of such special meeting shall be shown in call when issued.

Sec. 4. (a) A Convention of the Chairmen of all Local Protective Committees, or other authorized representatives, coming under the jurisdiction of this Board, shall be held in the City of Pittsburgh, Pa., on the Sunday preceding the regular January meeting, bi-ennially, to convene at 9.30 A. M., beginning with the year 1921.

(b) The purpose of these conventions is to bring before the Local Chairmen matters of importance that affect the membership of the local lodges and to permit such discussion of matters as may be a help and benefit to our organization.

(c) The Local Chairmen, or other authorized representative, attending this Convention shall receive an allowance of four dollars ($4.00) per day, not to exceed a total of fifteen dollars ($15.00) for the

entire sessions attended by them, which allowance shall be paid out of the funds of the Board.

(d) No lodge in arrears in excess of two (2) months with their per capita to the Board will be allowed representation at this Convention.

(e) No lodge shall be entitled to more than one representative, who shall be an employe of the Pennsylvania System.

Article IV.

Officers and How Chosen.

Section 1. Any member of this Brotherhood in good standing, who is or has been employed by the Pennsylvania System in any capacity coming under the jurisdiction of this Brotherhood, and who shall have been a member of the Brotherhood for at least one (1) year, shall be eligible to the office of General Chairman, Vice General Chairman, General Secretary or General Treasurer, provided that, (with the exception of past members of the Board) before he can be so elected as General Chairman or Vice General Chairman he shall have served at least one (1) year as a member of a Local Protective Committee.

Sec. 2. The Officers of this Board shall be elected bi-ennially at the regular January meeting of the Board, beginning 1921, and shall remain in office for a period of two (2) years, or until their successors shall have been duly elected and installed.

Sec. 3. The Division or Assistant General Chairmen shall be elected bi-ennially at the Convention of the Chairmen of the Local Protective Committees, beginning 1921, and shall remain in office for a period of two (2) years, or until their successors shall have been duly elected and installed.

* * * * * * * * *

ARTICLE VIII.
Funds.

Section 1. The funds for the transaction of the business of the Board shall be raised by the means of levying a per capita tax on the membership of the Local Lodges of the Pennsylvania System in accordance with the Protective Laws of the Grand Lodge, the amount of such tax to be determined by the Board, and to be based upon the members in good standing as of the last day of each month.

Sec. 2. This Board also has authority to levy special assessments in addition to the per capita tax as provided for by the Protective Laws of the Grand Lodge.

Sec. 3. There shall also be paid to the Board the sum of one dollar ($1.00) for each Pennsylvania System employe elected to membership in the Brotherhood.

Sec. 4. The per capita tax levied by this Board on the membership of the Local Lodges of the Pennsylvania System shall be in the hands of the General Secretary not later than the 15th of the month following the month upon which this tax is based.

Sec. 5. All per capita tax to this Board from newly organized lodges shall begin with the same month as the Grand Lodge per capita tax.

Sec. 6. The penalty for the non-payment of per capita tax or special assessments levied by this Board shall be as prescribed by the Protective Laws of the Grand Lodge. The Board may, at their discretion, refuse to handle grievances or give aid to any lodge in arrears in excess of two (2) months in the payment of their per capita tax or assessments.

Sec. 7. The General Treasurer shall deposit the funds of the Board to the credit of the Board in a re-

liable National Banking Institution, keeping a checking account and a savings account, the extent of such accounts to be determined and fixed by the Executive Committee.

• • • • • • • • • •

ARTICLE XI.

Section 1. These By-Laws may be altered or amended at any regular meeting of the Board by a two-thirds (2/3) vote of the members present; provided that such alteration or amendment shall have been presented in writing, signed by the proposer, and shall have been read at two (2) consecutive sessions of the Board; action to be taken at the next succeeding session, provided that they in no wise conflict with the Constitution, Laws or Regulations of the Brotherhood.

Sec. 2. After adoption, a copy of all By-Laws shall be submitted to the Grand President for approval. They shall, if approved by him, become effective from that date, and shall not be printed before being so approved. An official copy bearing the seal of the Board, signed by the General Secretary, shall be deposited with the Grand Secretary-Treasurer.

BANKS E. SHULL
HENRY A. LEISENRING
C. R. BRICELAND
Committee.

Adopted: October 15, 1920, Pittsburgh, Pa.
JOHN F. ERHARD,
General Chairman, Lines East.
C. R. BRICELAND,
General Chairman, Lines West.

Attest: BANKS E. SHULL,
General Secretary.

Approved: Nov. 19, 1920, Cincinnati, Ohio.
E. H. FITZGERALD,
Grand President.

EXHIBIT "E."
(Filed October 19, 1923.)

Received Jan. 6, 1921, Office of Grand President.

Published by the Standard Railroad of the World

For the Information of the Public and Employes

THE
PENNSYLVANIA STANDARD

Volume 1 May 24, 1921 Number 5

EMPLOYES TO ELECT THEIR OWN REPRESENTATIVES TO NEGOTIATE WITH PENNSYLVANIA MANAGEMENT

General Atterbury Announces Plan to Carry Out Labor Board's Decision

ALL EMPLOYES TO VOTE

May Choose Union or Non-Union Men, as Employes Themselves Decide

Management Proposes That All Have Voice in Deciding Their Welfare

ASK FULL COOPERATION

Highest Interest of Road to Be Realized Only in Welfare of Its Employes

A plan of employes' representation to include all employes on the Pennsylvania System has been announced by General W. W. Atterbury, Vice-President in Charge of Operation. The immediate purpose of the plan is the election of representatives to negotiate

new rules and working conditions under the recent decision of the United States Railroad Labor Board, which terminates the present National Agreements on July 1st. It is the aim, however, to "develop a plan under which every individual employe may have a voice in the progressive efforts of the railroad itself."

In this connection General Atterbury says in his statement to the employes:

"While the immediate emergency to be covered is the preparation of mutually satisfactory rules and regulations, it is the hope of the management that the men thus chosen as representatives may serve as the nucleus of committees which shall frequently confer with the officers on all matters not only affecting your welfare, but also the welfare of the railroad and of the public that we all serve."

The statement in full follows:

In June, 1919, soon after my return from France, I made the statement before a meeting of our employes and their families that I believed it was the right of an employe to have a voice in determining the rules and regulations under which he should work.

Since that time I have been consistently opposing the "National Agreements," because I have believed the effect of those "agreements" was to take that right away from you, and to take away from our officers the privilege of dealing with our own men.

By Decision No. 119 of the United States Railroad Labor Board, these "National Agreements" have been abrogated, as of July 1, 1921. In the meantime a substitute must be negotiated, which will be mutually satisfactory to the Management and to the employes.

Co-operation Essential

Certain principles have been laid down in Decision No. 119 for our mutual guidance. I quote those

which have a direct bearing on what I have to propose to you:

1.

"An obligation rests upon management, upon each organization of employes, and upon each employe to render honest, efficient and economical service to the carrier serving the public."

2.

"The spirit of co-operation between management and employes being essential to efficient operation, both parties will so conduct themselves as to promote this spirit."

Also, in a recent message to Congress, President Harding stated the principle that:

"Labor must join management in understanding that the public which pays is the public to be served."

Principle No. 7 of Decision No. 119 reads as follows:

"The right of employes to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with if, and when, the representatives of a majority of the employes of each of the several classes directly affected shall have conferred with the management."

Principle No. 15 reads:

"The majority of any craft or class of employes shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employes in such craft or class. No such agreement

shall infringe, however, upon the right of employes not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

I also quote from the preamble of Decision No. 119, as follows:

"To secure the performance of the obligation to confer on this dispute, imposed by law on officers and employes of carriers, to bring about the recognition in rules of differences between carriers where substantial, to preserve a degree of uniformity in rules regulating subject-matters of a general nature, to prevent to some extent the operation in negotiations of a possible disparity of power as between the carriers and their employes, and to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live, the Labor Board has determined upon the following action . . ." (The Board then recites its decision.)

There is an apparent discrepancy between Principle No. 7 and Principle No. 15, but the intent of the decision, as stated in the preamble, is

"to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formation of rules under which they must live."

Mutual Obligation to the Public

I quote the above because I want our employes and our officers to realize that we have a mutual obligation to the public, which obligation can be fully met only by close co-operation.

The aim of the Pennsylvania Railroad during the past year has been to re-establish with its own men a

happy and harmonious relationship. This decision of the U. S. Railroad Labor Board now makes this possible.

The railroads are asked to confer with representatives of the different classes of employes, with the view to establishing proper rules and regulations. This is precisely what the Management of the Pennsylvania Railroad has desired.

The employes have the right to select their representatives from among their own number.

Detailed conditions designed solely to secure an accurate expression of the desire of the employes, under which representatives will be chosen, will be announced later.

The men thus selected will be recognized by the Management as empowered to speak for the men by whom they are chosen.

Employes to Choose Own Men

The representatives chosen by the employes may or may not be union men, as the employes themselves decide.

As soon as the representatives are elected, the officers will seek a conference with them, in order to negotiate rules and regulations.

The representatives so chosen will be protected in their position no matter what may be their attitude with reference to the provisions of such rules and regulations.

They will be provided with the necessary transportation, and the Company will reimburse them for time lost, and for reasonable expenses while on this service.

The above applies to a union man, as well as to a non-union man.

AIM OF MANAGEMENT

While the immediate emergency to be covered is the preparation of mutually satisfactory rules and regulations, it is the hope of the Management that the men thus chosen as representatives may serve as the nucleus of committees which shall frequently confer with the officers on all matters, not only affecting your welfare, but also the welfare of the railroad, and of the public that we all serve.

Together, we will develop a plan under which every individual employe may have a voice in the progressive efforts of the railroad itself.

This plan, of course, will not be put into effect for men in engine and train service. All controversial questions affecting these men are now settled by the Joint Reviewing Committee, and it is earnestly desired to establish a similar method for settling controversial questions affecting employes in all other branches of the service.

There are three "Musts" that we will have to work out in co-operation:

1. The public *must* have efficient and economical service.
2. The officers and the employes *must* be paid good wages, in return for good service rendered.
3. We *must* earn a reasonable return on the capital invested in the property.

Through the representatives of the employes to be selected in the manner mentioned we shall be able to get closer together; we shall be able to look one another in the face, and mutually to understand the facts affecting our common interest. The highest interests of the Pennsylvania Railroad can be realized only in the welfare of its employes.

I earnestly ask, therefore, the hearty co-operation of every employe, to the end that we may successfully work together. Doing that, the Pennsylvania Railroad will continue to be one of the greatest railroads in the world. We will add to the happiness and material welfare of every employe, and we will take a real step along the road to the restoration of general prosperity.

EXHIBIT "G."

I hereby certify that the attached is a true and correct copy of correspondence filled by Mr. E. T. Whiter with the United States Railroad Labor Board in Docket 404.

L. M. PARKER
Secretary
U. S. R. R. Labor Board.

Sworn to and subscribed before
me this the 27th day of October, 1923.
GERTRUDE M. DILL,
Notary Public.
My commission expires August 28th, 1924.
(Seal)

As requested by your Board on page 349 of the stenographic transcript of proceedings, Saturday, July 9, 1921, we show below the number of molders who were eligible to vote on June 2nd and June 8th in the Altoona Works:

June 2nd—573 molders eligible to vote.
June 8th—571 molders eligible to vote.

July 15, 1921.

Mr. C. P. Carrithers, Secretary,
U. S. Railroad Labor Board,
Kesner Building,
Chicago, Illinois.

Gentlemen:

Referring to meetings held by your board July 8th and 9th, 1921, as a result of application by Railway Employes Department, American Federation of Labor, System Federation No. 90, decision in connection with dispute alleged to exist between that organization and the Pennsylvania System with regard to negotiation of agreement with its shop craft employes.

Complying with request of the Board as contained on page 178 of the proceedings of said hearing, we are furnishing herewith eleven (11) copies of statement showing the total number of ballots printed and furnished officers for distribution to employes; also analytical summary showing number of active employes eligible to vote; number voting; number voting for individuals; also, in detail, number voting for organizations. There is also attached separate statements covering each class of employes shown on summary, giving the result of vote for each class by regions.

Additional information requested by the Board at other points in the proceedings will be furnished currently as prepared.

Yours very truly,
(Signed) E. T. WHITER
Assistant to Vice President

Enc.
Copy to*
Mr. B. M. Jewell
Mr. N. P. Good
1—

PENNSYLVANIA SYSTEM

Summary of Vote Cast for Election of Employe Representatives

Class of Employees.	No. of Employes Eligible to Vote.	Voting.	Number Voting for Individuals.	Ballots Cast for Organizations									Ballots Not Valid			
				B. R. Sig. A.	Sys. Fed. No. 90.	O. B. T.	Bro. Railway Clerks	O. B. S. A.	I. B. of F & O	U. B. M. W.	B. of Ding. Car Emps.	B. of Dng. Car. Cooks & Waiters	Miscellaneous	Total	Ballots Voted Blank	For Other Reasons
Signal Foremen	237	223	215										1	1	3	4
Signal Employes	2,061	1,957	1,938	2									1	3	12	4
*Shop Foremen	3,319	2,628	2,582										9	9	30	7
*Shop Crafts	33,104	5,236	3,480		767								59	826	742	188
Telegraphers	6,417	5,631	5,568			23							3	26	6	31
Clerks	27,839	18,692	12,502				4,612						582	5,194	830	166
All other Office, Station, Warehouse, etc., Emps.	13,156	6,202	2,545				3,102						120	3,222	339	96
Station, Storehouse, Warehouse, etc., Foremen	620	334	145				151						13	164	20	5
Agents	776	643	589					46					1	47	2	5
Stationary Engineers and Firemen	1,044	130	97						1				15	16	12	5
*M. W. Foremen	4,586	3,969	3,837							35			2	37	20	75
M. W. Employes	35,623	26,768	25,654							264			91	355	234	525
MARINE EMPLOYES PHIL. HARBOR																
Pilots, Captains, etc.	32	30	30													
Engineers	35	34	34													
Unlicensed Emps.	146	115	112												3	
Sta. Res. Emps.	480	457	338								119			119		
Dining Car Stewds.	137	126	124													2
Dining Car Cks. & Wts.	1,185	1,028	702									316		316		10
Grand Total Sys.	130,797	74,203	60,492	2	767	23	7,865	46	1	299	119	316	897	10,335	2,253	1,123

*Figures do not include Altoona Works.

PENNSYLVANIA SYSTEM

SUMMARY SHOWING NUMBER OF BALLOTS PRINTED
and
FURNISHED TO OFFICERS FOR DISTRIBUTION.

	Number of Ballots
System General Offices	6,003
Eastern Region	98,775
Central Region	65,025
Northwestern Region	29,400
Southwestern Region	22,500
Grand Total	221,703

PENNSYLVANIA SYSTEM

SUMMARY
of
Vote Cast by
Foremen, Division Signal Inspectors, Assistant Foremen.

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Eastern	118	112	108	1	0	3
Central	82	74	71	0	3	0
Northwestern	21	21	21	0	0	0
Southwestern	16	16	15	0	0	1
Total	237	223	215	1	3	4

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Leading Signal Maintainers, Leading Signalmen, Signalmen, Signal Maintainers, Assistant Signalmen, Assistant Signal Maintenance, Their Helpers in the Signal Department.

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations B. R. S. of A.	Misc.	Voted blank	For other reasons
Eastern	1133	1099	1093	0	1	2	3
Central	652	595	585	0	0	10	0
Northwestern	163	158	158	0	0	0	0
Southwestern	113	105	102	2	0	0	1
Total	2061	1957	1938	2	1	12	4

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Foremen, Assistant Foremen and Gang Foremen of Shop Crafts Mechanics, Helpers and Apprentices.
Maintenance of Equipment and Telegraph and Telephone.

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations Misc.	Voted blank	For other reasons
Eastern	1472	1115	1092	3	16	4
Central	1106	841	823	6	12	0
Northwestern	313	285	284	0	0	1
Southwestern	428	387	383	0	2	2
Total	3319	2628	2582	9	30	7

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Shop Crafts, Mechanics, Helpers and Apprentices.
Maintenance of Equipment and Telegraph and Telephone.

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations System 90	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Eastern	15376	2582	1734	318	18	495	17
Central	10760	1651	1191	185	26	164	85
Northwestern	2614	776	479	219	6	58	14
Southwestern	4354	227	76	45	9	25	72
Altoona Works	....	....	....	...	..	..	..
Total	33104	5236	3480	767	59	742	188

Statement furnished the Board at hearing on July 8, 1921.

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Tower and Train Directors, Telegraphers, Telephone Operators (except Switchboard Operators), Leverman, Block Operators, Printer Operators.

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations O. R. T.	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Eastern	2905	2529	2505	17	0	5	2
Central	1871	1618	1595	1	2	0	20
Northwestern	687	608	603	1	0	1	3
Southwestern	954	876	865	4	1	0	6
Total	6417	5631	5568	23	3	6	31

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

All Clerks (excluding Chief Clerks to Supervisory Agents, Superintendents and Staff Officers, General Superintendents and Staff Officers) in all Offices and Departments up to and including General Superintendent's Office.

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations B. of R. C.	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
System Gen. Office	4630	4400	3792	35	226	343	4
Eastern	11132	6264	5029	845	34	342	14
Central	6865	3900	2209	1165	309	121	96
Northwestern	2342	1934	712	1192	7	16	7
Southwestern	2448	1820	395	1375	6	0	44
Altoona Works	422	374	365	....	...	8	1
Total	27839	18692	12502	4612	582	830	166

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

All Office, Station, Warehouse, Storehouse and Elevator Forces and Engine and Train Crew Callers:

Excluding

(a) Agents, Storekeepers, Station Masters and their Assistants.
(b) All Clerks.
(c) Station, Storehouse, Warehouse and Elevator Foremen and Assistant Foremen.

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations B. of R. C.	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
System Gen. Office	296	211	211	0	0	0	0
Eastern	7423	2988	1751	900	25	293	19
Central	3064	1267	337	799	78	41	12
Northwestern	1397	1071	191	837	15	5	23
Southwestern	976	665	55	566	2	0	42
Total	13156	6202	2545	3102	120	339	96

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Agents, Small Non-Telegraph, Agent Telegraphers, Agent Telephoners.

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations ORSA	Misc.	Voted blank	For other reasons
Eastern Region	359	285	277	7	0	0	1
Central Region	148	120	111	6	0	1	2
Northwestern Region	167	150	118	29	0	1	2
Southwestern Region	102	88	83	4	1	0	0
Total	776	643	589	46	1	2	5

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Station, Storehouse, Warehouse and Elevator Foremen and Assistant Foremen.

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations B. of R. C.	Misc.	Voted blank	For other reasons
Eastern	327	149	77	48	4	19	1
Central	145	82	40	37	4	1	0
Northwestern	96	69	16	48	2	0	3
Southwestern	52	34	12	18	3	0	1
Total	620	334	145	151	13	20	5

PENNSYLVANIA SYSTEM

SUMMARY
of
Vote Cast by

Stationary Engineers (Steam), Stationary Firemen, Stoker Operators, Engine Room Oilers, Boiler Room Water Tenders.

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations I.B.of F.& O.	Misc.	Voted blank	For other reasons
Eastern	635	62	51	0	1	8	2
Central	273	41	32	1	4	3	1
Northwestern	70	10	4	0	5	1	0
Southwestern	66	17	10	0	5	0	2
Total	1044	130	97	1	15	12	5

PENNSYLVANIA SYSTEM

SUMMARY
of
Vote Cast by

Bridge Inspectors
Carpenter Foremen
Carpenter Asst. Foreman
Fence Foremen
Foremen, Track
Foremen, Floating Gang
Foremen, Work Train
Foremen, Shop Labor
Asst. Foremen, Shop Labor
Asst. Foremen, Track
Asst. Foremen, Floating Gang
Asst. Foremen, Work Train
Gang Foremen, M. W. of Shop Labor
Gang Leaders, M. W. or Shop Labor
Gardeners Foremen
Gardeners Asst. Foremen
Masons Foremen
Masons Asst. Foremen
Painter Foremen
Painter Asst. Foremen
Plumber Foremen
Plumber Asst. Foremen
Tinsmiths Foremen
Tinsmiths Asst. Foremen
Other M. of W. Dept. Foremen and Asst. Foremen, except Telegraph, Telephone and Signal

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations UBMW	Misc.	Voted blank	For other reasons
Eastern	2295	1955	1877	25	2	13	38
Central	1339	1135	1096	5	0	5	29
Northwestern	405	366	357	5	0	2	2
Southwestern	547	513	507	0	0	0	6
Total	4586	3969	3837	35	2	20	75

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Ashpit Laborers
Bricklayers
Bridge Watchmen
Bridge Tenders
Coal Wharf Laborers
Carpenters, Laborers and Helpers
Crossing Watchman
Cut Watchmen
Derrick Engineers
Ditcher Engineers and Firemen
Drivers and Stablemen
Fence Laborers
Frog and Switch Repairmen
Gardeners
Laborers, Track
Laborers, Floating Gang
Laborers, Extra Gang
Laborers, Work Train
Laborers, Shop
Locomotive Cleaners
Locomotive Preparers
Masons, Laborers and Helpers
Painters & Helpers (M. of W. & S.)
Pavers
Plasterers
Pumpmen
Track Watchmen
Tunnel Watchmen
Other M. or W. & S. and Shop Laborers

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations UBMWE&RSL	Misc.	Voted blank	For other reasons
Eastern	15903	11846	11358	167	23	137	161
Central	12257	8810	8347	82	31	62	288
Northwestern	2661	2169	2093	15	29	20	12
Southwestern	4130	3449	3385	0	0	0	64
Altoona Works	672	494	471	0	8	15	0
Total	35623	26768	25654	264	91	234	525

PENNSYLVANIA SYSTEM

Eastern Region

SUMMARY

of

Vote Cast by

Marine Employes,—Pilots, Captains, Etc.

Location	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations		Voted blank	For other reasons
Phila. Harbor	32	30	30	..	..	..	..

PENNSYLVANIA SYSTEM

Eastern Region

SUMMARY

of

Vote Cast by

Marine Employes, Engineers.

Location	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Phila. Harbor	35	34	34	..	..	..

PENNSYLVANIA SYSTEM

Eastern Region

SUMMARY

of

Vote Cast by

Marine Employes, Unlicensed

Location	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Phila. Harbor	146	115	112	..	3	..

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Station Restaurant Employes

Region	Number of Employes Eligible to vote	Number of Employes Voting	Number voting for individuals	Ballots not Valid: Cast for Organizations BDCE	Ballots not Valid: Cast for Organizations Misc.	Ballots not Valid: Voted blank	Ballots not Valid: For other reasons
Eastern	480	457	338	119	..	..	..
Northwestern	..	..	..	..	..	..	..
Total	480	457	338	119	..	..	..

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Dining Car Stewards

Region	Number of Employes Eligible to vote	Voting	Number voting for individuals	Ballots not Valid Cast for Organizations		Voted blank	For other reasons
Eastern	85	80	80	..	..	..	..
Northwestern	52	46	44	..	..	..	..
Total	137	126	124	..	..	..	..

PENNSYLVANIA SYSTEM

SUMMARY

of

Vote Cast by

Dining Cooks and Waiters

Region	Number of Employes Eligible to vote	Voting	Number Voting for individuals	Ballots not Valid Cast for Organizations Bro. Dining Car Cooks and Waiters	Voted blank	For other reasons
Eastern	752	646	330	316	..	..
Northwestern	433	382	372	..	..	10
Total	1185	1028	702	316	..	10

EXHIBIT "I."
(Filed October 19, 1923.)

PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION
NEW JERSEY DIVISION
EASTERN PENNSYLVANIA DIVISION
SOUTHERN DIVISION
CENTRAL PENNSYLVANIA DIVISION
PHILADELPHIA TERMINAL DIVISION

REGULATIONS FOR THE
GOVERNMENT
OF
CLERICAL FORCES
UNDER THE JURISDICTION OF
GENERAL AND DIVISION
SUPERINTENDENTS

EFFECTIVE FEBRUARY 1, 1923

AND

BY-LAWS
OF THE
CLERKS' ASSOCIATION
OF THE
OPERATING DEPARTMENT
PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION

EFFECTIVE FEBRUARY 1, 1923

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PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION

NEW JERSEY DIVISION
EASTERN PENNSYLVANIA DIVISION
SOUTHERN DIVISION
CENTRAL PENNSYLVANIA DIVISION
PHILADELPHIA TERMINAL DIVISION

REGULATIONS FOR THE GOVERNMENT OF CLERICAL FORCES UNDER THE JURISDICTION OF GENERAL AND DIVISION SUPERINTENDENTS

PREAMBLE.

These regulations are for the government of Clerks of the various grades in all offices and departments under the jurisdiction of General and Division Superintendents.

EXCEPTIONS.

These regulations do not apply to:

Employes affected.

(*a*) Individuals who are paid varying amounts for special service which takes only a portion of their time from outside employment or business.

(*b*) Supervisory forces.

(*c*) Employes assigned to road service, where special training, experience and fitness are necessary.

NOTE.—Employes covered by Sections (*b*) and (*c*) will, however, retain their seniority as provided in Regulation 3-F-1.

REGULATION No. 1—PROMOTION.

Promotion basis.

1-A-1. Ability, fitness and seniority entitle employes to promotion as opportunity may offer. The management shall decide whether the candidate or applicant is qualified therefor. Employes passed around for promotion will, if they so desire, be given a competitive examination.

1-A-2. Except as provided in Regulation 3-E-2, employes are entitled to promotion only in the district over which their seniority prevails.

Declining promotions.

1-A-3. Employes declining promotions or declining to bid for a bulletined position will not lose their seniority.

Failure to qualify.

1-A-4. Subject to the provisions of Regulation 1-A-1, employes will be awarded bulletined positions in accordance with ability, fitness and seniority, which will be determined by the management, and upon being awarded such bulletined positions and failing to qualify within thirty (30) days will retain their seniority, may bid on any bulletined positions thereafter, but may not displace any regularly assigned employe.

Official positions.

1-B-1. Employes will be considered for appointment to excepted, supervisory or official positions.

REGULATION NO. 2.—SELECTION OF POSITIONS.

Bulletin.

2-A-1. New positions or vacancies will be promptly bulletined in places accessible to all employes affected, for a period of five (5) days in the districts where they occur; bulletin to show location, title, hours of service, rate of pay and brief description of duties. Employes desiring such positions will file their applications with the designated official within that time, and assignment will be made within five (5) days thereafter. The name of the successful applicant will, immediately thereafter be posted for a period of five (5) days where the position was bulletined. This rule does not apply to personal office force positions, which include positions of a direct or confidential nature. The duties of such positions will govern, the appointing officer to be the judge, subject to the approval of the Superintendent or the General Superintendent.

Personal office force positions.

Former position vacant.

2-A-2. When an employe bids for and is awarded a permanent position his former position will be declared vacant and bulletined. Such employe cannot make application for a position he has just vacated, but if the position is vacated by the employe who fills the vacancy he may then make application and his application will be considered.

Temporary appointment.

2-A-3. Bulletined positions may be filled temporarily pending an assignment, and in event no applications are received may be permanently filled without regard to these regulations.

Vacancy.

2-A-4. Positions or vacancies of thirty (30) days or less duration will be considered temporary, and may be filled without bulletining.

Positions or vacancies of indefinite duration need not be bulletined until the expiration of thirty (30) days from the date of employment or vacancy.

Positions or vacancies known to be of more than thirty (30) days duration will be bulletined and filled in accordance with these regulations.

Bidding after absence.

2-A-5. An employe returning after leave of absence, sickness or disability, may return to his former position. If for any reason he does not desire his former position, he may upon his return or within five (5) days thereafter, exercise seniority to any position bulletined during his absence, unless in the judgment of his superior officer an injustice will be done any other employes who have been moved or changed during his absence. Employes displaced by his return may exercise their seniority in the same manner.

More than one vacancy.

2-A-6. When more than one (1) vacancy or new position exists at the same time, employes shall have the right to bid on any or all, stating preference. (Except

as specified in Regulation 2-A-2, nothing in this regulation shall be construed to prevent employes bidding on all bulletined positions, irrespective of whether the position is of the same, greater or lesser remuneration.)

REGULATION No. 3—SENIORITY.

Seniority.

3-A-1. Except as provided in Regulation 3-E-2, seniority begins at the time the employe's pay starts in the department or class.

Seniority Districts.

3-B-1. Seniority districts of defined limits will be established by mutual agreement between the management and the employes affected.

Reducing force.

3-C-1. When reducing forces seniority will govern subject to the provisions of Regulations 1-A-1 and 1-A-4. Employes furloughed or relieved from service account of reduction in force will be given at least thirty-six (36) hours previous notice. When forces are increased, employes who have been relieved will be given preference in re-employment, if available and previous service has been satisfactory.

Roster.

3-D-1. A seniority roster of all employes in each seniority district will be posted in places accessible to all employes affected. The rosters will be revised and

posted in January of each year and will be open to correction for a period of sixty (60) days from date of posting, except in case of employes off duty on leave of absence, sickness or disability at the time roster is posted, this time limit will apply from the time they report for duty. A note will be placed on each roster stating the time limit of appeal. Upon presentation of proof of error by an employe or his representative, such error will be corrected, and no change in seniority standing of any employe will be made on the part of the management without notifying the local committee. A copy of the roster will be furnished to the representatives of the employes upon request.

3-D-2. Seniority rosters will show the name and date of entry of the employes into the service and date entered department or class.

Filing applications.

3-E-1. Employes filing applications for positions bulletined on other districts or on other rosters will, if they possess the necessary qualifications, be given preference over non-employes.

Transferring.

3-E-2. Except as provided in Regulation 3-F-1, employes transferred from one seniority district to another at the instance of the management, will carry their seniority with them to the district to which transferred and will forfeit seniority in the district from

which transferred, provided that in reduction of force no position is available in the district to which transferred, accumulated seniority may be exercised in the district from which transferred.

Employes filing applications, and awarded bulletined positions in other seniority districts, will rank from date of transfer on seniority roster of district to which transferred, and in reduction of force, if no position is available in the district to which transferred, accumulated seniority may be exercised in the district from which transferred.

Change in seniority districts.

3-E-3. In the event of a change in seniority districts, the seniority of employes affected will be adjusted in the revised districts by the management and employes affected.

Positions abolished.

3-E-4. Except as provided in Regulation 2-A-5, employes whose positions are abolished or whose starting time is permanently changed more than one (1) hour may, within ten (10) working days after date of notification, exercise their seniority over junior employes. Other employes affected, may in like manner exercise seniority over junior employes. Employes failing to exercise seniority within the prescribed time limit will retain their seniority, may bid on bulletined positions thereafter, but cannot displace any regu-

larly assigned employes. Positions will not be abolished without at least thirty-six (36) hours notice to employes affected.

Excepted positions.

3-F-1. Employes appointed to or now filling excepted, supervisory or official positions shall retain and continue to accumulate seniority in the district from which appointed.

When excepted positions are filled by persons other than employes covered by these regulations, the seniority of such persons will begin at the time of entering department or class.

Exercising seniority.

3-G-1. The exercise of seniority in the reduction of force or displacing junior employes provided for in these regulations, is subject to the provisions of Regulations 1-A-1 and 1-B-1.

Seniority cannot be exercised to displace the incumbents of personal office force positions.

Posting on positions.

3-H-1. Prior to exercising seniority under Regulations 3-C-1 and 3-E-4, an employe displaced will, if he so desires, be allowed to post without pay on any position that he is eligible to select, for a period not to exceed seven (7) days, but seniority must be excercised within the time limit prescribed in Regulation 3-E-4.

REGULATION NO. 4—TIME ALLOWANCES.

4-A-1. Eight (8) hours shall constitute a day. For hourly rated employes service in excess of eight (8) hours work on any day, exclusive of meal period, will be paid for as overtime at pro rata rates for the 9th and 10th hours of continuous service and at the rate of time and one-half thereafter. Day's work. Overtime.

For monthly rated employes, service rendered on working days in excess of working hours in pay period (number of working days paid for times eight) will be paid for as overtime at pro rata rate until the hours worked exceed the number of hours produced by multiplying by 10 the working days paid for; thereafter at rate of time and one-half. In case certain working days or part days are allowed off duty with pay, overtime worked, including calls, on working days shall be used to offset such time off duty with pay.

Sunday or other assigned day of rest, as well as New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas will not be considered working days under this

regulation. Payment for service performed on Sundays or rest days and the above named holidays will be computed separately on the following basis:

A minimum of three (3) hours at pro rata rates for two (2) hours work or less, except that when assigned to work the full number of hours constituting the regular working day assignment, the guaranteed minimum of three (3) hours for two (2) hours work or less will not apply. Pro rata rates will be allowed for the first ten (10) hours of continuous service, exclusive of meal period, on such days, and at the rate of time and one-half thereafter.

Hourly and monthly rates.

All clerical forces will be paid on either an hourly or monthly basis, except where paid on a tonnage or piecework basis.

Pro rata overtime rate will be determined by dividing monthly rate by 204, rate to be extended to the nearest tenth of a cent.

Intermittent service.

4-A-2. Where service is intermittent or does not require continuous application, overtime, as provided in Regulation 4-A-1, will be allowed for all time actually worked in excess of eight (8) hours within a spread of twelve (12) consecutive hours, and for all

time in excess of twelve (12) hours computed continuously from the time first required to report for duty until final release at end of day. Time shall be counted as continuous service in all cases where the interval of release from duty at any one time is less than one (1) hour.

Hourly rated employes.

4-A-3. Hourly rated employes whose seniority entitles them to regular employment required to report at regular starting time and place for a day's work and when conditions prevent work being performed will be allowed a minimum of three (3) hours pay at pro rata rates. If held on duty over three (3) hours actual time so held will be paid for. If required to work any part of the time so held and through no fault of their own are released before a full day's work is performed, will be paid not less than (8) hours pay unless they lay off of their own accord. This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be handled by regular forces. Neither will it apply to certain days of the week where, in a given office or department, it is the practice to let employes off for a portion of the 8-hour day, nor when forces are worked

on a short-time basis, when actual hours worked will be paid for.

Nothing in this regulation will be construed to prohibit the establishment of assignments of less than eight (8) hours on Sunday or other assigned day of rest, as well as New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas, with a minimum allowance of three (3) hours for two (2) hours work or less and at pro rata rates thereafter.

Meal period.

4-A-4. Except in special cases, authorized by the management, or where regular operations require eight (8) consecutive hours of work, the meal period will not be less than thirty (30) minutes nor more than one (1) hour.

4-A-5. If the meal period is not allowed within the usual limits and is worked, time within which to eat will be afforded at the first opportunity.

Starting time.

4-B-1. Regular assignments shall have a fixed starting time and, except in emergency, the regular

starting time shall not be changed without at least sixteen (16) hours notice to the employes affected.

4-B-2. Where three consecutivev shifts are worked covering the 24-hour period no shift will have a starting time after twelve o'clock midnight and before five A. M.

Notified or called.

4-C-1. Except as provided in Regulation 4-A-1, employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, time held on duty in excess of two (2) hours to be paid for at pro rata rates.

4-C-2. Employes who have completed their work period for the day and have been released from duty required to return for further service, may, if conditions justify, be paid as if on continuous duty.

Absorbing overtime.

4-D-1. Employes will not be required to suspend work during regular hours to absorb overtime.

Authorizing overtime.

4-D-2. No overtime hours will be worked except by direction of proper authority.

Notified when disallowed.

4-E-1. When time is claimed in writing and such claim is disallowed the employe making the claim shall

be notified in writing and reason for non-allowance given.

Day of rest.

4-F-1. So far as practicable, consistent with the requirements of the service, employes shall be allowed one day of rest (not necessarily Sunday) in seven. When the assigned day of rest for an employe is other than Sunday, Regulation 4-A-1 will apply to such as signed day.

Attending court.

4-G-1. When attending court as a witness for the railroad, an employe will be allowed compensation equal to what would have been earned had such interruption not taken place and, in addition, necessary actual expenses while away from headquarters. All fees and mileage accruing to the witness will be assigned to the railroad.

Service other than regular duties.

4-H-1. Employes temporarily assigned to higher rated positions will receivve the higher rates while occupying such positions; employes temporarily assigned to lower rated positions will not have their rates reduced.

A "temporary assignment" contemplates the fulfillment of all the duties and the assumption of all the

responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

Abolition of rates or positions.

4-I-1. Established rates of pay or positions shall not be discontinued or abolished and new ones created covering relatively the same class of work, for the purpose of reducing rates of pay or evading the application of these rules.

REGULATION NO. 5—HANDLING OF EMPLOYES.

Applications.

5-A-1. The applications of new employes shall be approved or disapproved within ninety (90) days after the applicant begins work.

In the event of applicant giving false information, this regulation shall not apply.

REGULATION No. 6—DISCIPLINE.

How imposed.

6-A-1. Employes will not be suspended nor dismissed from the service without a fair and impartial trial. Neither will they be held off duty for minor offenses pending investigation or decision. If found not guilty, employe will be compensated for the wage loss suffered, if any.

Statements.

6-A-2. When statements are taken in controversial matters employes making same will be permitted to read and correct same before signing, and will be furnished a copy upon request.

Advice of cause.

6-B-1. An employe will, on request, be given a letter stating cause of discipline.

Date of suspension.

6-C-1. If an employe is suspended, the suspension will date from time taken out of service.

REGULATION No. 7—APPEALS.

Right of appeal.

7-A-1. An employe who considers that an injustice has been done him and who has appealed his case in writing to his Superintendent within ten (10) days of notification, will be given a hearing at which he may

be accompanied by an employe covered by these regulations from the division on which he is employed, to assist him in presenting his case. After his appeal has been acted upon by the Superintendent, he may, if he so desires, be represented before the Superintendent, General Superintendent and General Manager by a committee representing employes covered by these regulations.

Regulation No. 8—Miscellaneous.

Incapacitated employes.

8-A-1. Efforts will be made to furnish employment (suited to their capacity) to employes who have become physically unable to continue in their present positions, provided they have served a sufficient time with the Company to warrant, in the judgment of the management, their being so placed.

Regulation No. 9—Notice of Changes in Regulations.

Change in Regulations.

9-A-1. Should either the management or the employes desire to change any or all of these regulations, the party desiring to make the change shall notify the other party in writing of the desired change; and no

change will be made, except by mutual consent, until thirty (30) days after such notice has been given.

FOR THE MANAGEMENT:

C. S. KRICK,
General Manager, Eastern Region, Pennsylvania Railroad System.

FOR THE EMPLOYES:

M. T. MILLER,
Regional Chairman, Eastern Region, General Chairman, Central Penna. Division.

D. E. FOX,
Chairman, Williamsport Division.

JAMES MCDONALD,
Chairman, Sunbury Division.

JAMES L. TUNNEY,
Chairman, Elmira Division.

G. G. FAGEN,
Chairman, Schuylkill Division.

C. C. ENGLISH,
General Chairman, Eastern Penna. Division; Chairman, Middle Division.

E. B. DAWSON,
Chairman, Tyrone Division.

A. L. EGOLF,
Chairman, Philadelphia Division.

C. C. MURRAY,
Chairman, Cresson Division.

H. M. BESECKER,
Chairman, Cumberland Valley Division.

I. G. FELL,
General Chairman, New Jersey Division; Chairman, Trenton Division.

CHAS. B. ALTHOUSE,
Chairman, New York Division.

W. R. FISK,
Chairman, Atlantic Division.

M. MORRIS LIPPINCOTT,
Chairman, Philadelphia & Camden Ferry.

E. A. WERKENTHEN,
Chairman, Hoboken Shops.

M. M. GREGORY,
Chairman, Trenton Shops.

J. A. MCLAUGHLIN,
General Chairman, Southern Division; Chairman, Maryland Division.

J. WM. WITTEKINDT,
Chairman, Baltimore Division.

H. E. HUDSON,
Chairman, Delaware Division.

D. N. POLLARD,
Chairman, Norfolk Division.

E. N. CRUMBLING,
General Chairman, Gen'l Supt.'s Dept.
Chairman, Gen'l Supt.'s Dept., Cen. Pa. Div.

S. T. MCDOWELL,
Chairman, Gen'l Supt.'s Dept., Eastern Pa. Div.

E. A. KIDNEY,
Chairman, Gen'l Supt.'s Dept., New Jersey Div.

JAS. M. REESE,
Chairman, Gen'l Supt.'s Dept., Southern Div.

T. J. CUNNINGHAM,
Chairman, Philadelphia Terminal Division.

Committee representing Clerical Forces Under the jurisdiction of General and Division Superintendents, Eastern Region, Pennsylvania Railroad System.

THE CLERKS' ASSOCIATION

OF THE

OPERATING DEPARTMENT

PENNSYLVANIA RAILROAD SYSTEM

EASTERN REGION

BY-LAWS

EFFECTIVE FEBRUARY 1, 1923

THE CLERKS' ASSOCIATION

OF THE

OPERATING DEPARTMENT

PENNSYLVANIA RAILROAD SYSTEM

EASTERN REGION

BY-LAWS

PREAMBLE.

In order to form an organization to establish satisfactory working conditions, adjust differences as they may arise and promote a mutual understanding between the management and the clerical forces in the Operating Department under General and Division Superintendents, Pennsylvania Railroad System, Eastern Region, these By-Laws are adopted.

This plan for handling all matters can be successful only by full conscientious co-operation on the part of both the management and employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting such matters.

TITLE.

This organization shall be known as "THE CLERKS' ASSOCIATION OF THE OPERATING DEPARTMENT, PENNSYLVANIA RAILROAD SYSTEM, EASTERN REGION."

ARTICLE I.

MEMBERSHIP.

SECTION 1. All employes who are actively engaged in a clerical capacity in the Operating Depart-

ment under General and Division Superintendents, Pennsylvania Railroad System, Eastern Region, who have been in the service of the Company for six (6) months or more and who are not within one of the two following classes, are entitled to membership in this Association:

(*a*) Chief Clerks to Supervisory Agents, Superintendents and Staff Officers, General Superintendents and Staff Officers.

(*b*) Those who, because of work of a special nature, devote only part of their time to the Company and are paid special rates therefor.

SEC. 2. Membership in this Association shall terminate on severance of employment in the service of the Company or upon assuming a status in conflict with membership requirements, as defined in Section 1 of this atricle.

ARTICLE II.

REPRESENTATION.

SECTION 1. Employes who are entitled to membership in this Association, as defined in Article 1, on each Division shall be entitled to elect from among their number three (3) representatives and, in like manner, those in each General Superintendent's Department shall be entitled to elect three (3) representatives.

SEC. 2. The representatives elected at the General Election in June, 1921, shall hold office as follows: On each Division and in each General Superintendent's Department the representative receiving the highest number of votes, three (3) years; the representative receiving the second highest number of votes, two (2) years; the representative receiving the third

highest number of votes, one (1) year. Representatives elected each year thereafter shall serve for a period of three (3) years; provided, however, that those elected to fill an unexpired term shall serve for only the balance of such unexpired term. Representatives shall be eligible for re-election.

SEC. 3. In case of a vacancy on any Local Committee the vacancy shall be filled by the remaining members of said committee by appointment. In the event they cannot reach a decision, the Chairman of the General Committee on their General Division shall cast the deciding vote. In the event that there are two (2) or more vacancies occurring on one Local Committee at the same time, the vacancies so occurring shall then be filled by the General Committee on their General Division by appointment. In the case of the Philadelphia Terminal Division, the Regional Committee and its Chairman shall, for the purpose of this section, assume the functions, respectively, of a General Committee and its Chairman.

SEC. 4. Vacancies filled, as provided in Section 3 of this Article, which represent unexpired terms of more than one (1) year, shall be filled at the next election for the balance of such unexpired term.

SEC. 5. A representative shall be deemed to have vacated office upon becoming ineligible to membership in this Association, as defined in Article 1.

SEC. 6. Members of this Association will not be eligible to hold offices of Local, General or Regional Chairman of employes covered by these By-Laws while at the same time holding any similar office as representative of employes not covered by these By-Laws.

Article III.

QUALIFICATIONS OF VOTERS AND REPRESENTATIVES.

Section 1. All employes who are entitled to membership in this Association, as defined in Article I, shall be entitled to petition for nominees and vote at all elections.

Sec. 2. All employees who are entitled to membership in this Association, who have had two (2) or more years of active service with the Company prior to the date of election or appointment, who are American citizens, and who are twenty-one (21) years of age or over on the date of election or appointment, shall be eligible to the office of representative.

Article IV.

NOMINATIONS AND ELECTIONS.

Section 1. Nominations and elections shall be held annually in the month of May.

Sec. 2. Nominations shall be held on the first Monday and election on the third Monday in the month named. In the event of either of these days being a holiday, the day immediately following shall be substituted.

Sec. 3. Nominations and elections shall be conducted in accordance with rules and regulations prescribed by the Regional Joint Committee, acting as a Rules Committee, with only such assistance from the management as may be required by said Committee.

Sec. 4. Nominations shall be by petition. Petitions signed by twenty-five (25) qualified voters on a Division or in a General Superintendent's Department, where there are more than one hundred (100) qualified voters, or by twenty-five per cent (25%) of the quali-

fied voters on a Division or in a General Superintendent's Department, where there are less than one hundred (100) qualified voters, shall be sufficient to place the name of the one petitioned for upon the ballot for that Division or Department.

SEC. 5. Elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any irregularities in the counting of ballots.

SEC. 6. The election ballot for each Division or General Superintendent's Department shall contain the names of all those placed in nomination as a result of petition on that Division or in that Department.

SEC. 7. The number of candidates for which a voter is entitled to vote shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

SEC. 8. The voter shall indicate his preference on the election ballot by placing a cross (x) opposite the name or names of the candidates he wishes to elect. Any other mark or marks shall render the ballot void.

SEC. 9. On each Division and in each General Superintendent's Department the candidate receiving the highest number of votes shall be declared elected to the regular three (3) year term of office. On Divisions or in General Superintendents' Departments where one (1) unexpired term is to be filled in addition to the regular three (3) year term of office, the candidate receiving the second highest number of votes on that Division or in that Department shall be declared elected to such unexpired term. On Divisions or in General Superintendents' Departments where two (2) unexpired terms are to be filled in addition to

the regular three (3) year term of office, the candidate receiving the second highest number of votes on that Division or in that Department shall be declared elected to the longer of the two (2) terms and the candidate receiving the third highest number of votes on that Division or in that Department the remaining term.

SEC. 10. In the event of a tie the Regional Joint Committee, acting as a Rules Committee, may in the absence of an agreement between the candidates so tied for office, order a special election to break the tie. At such special election only the names of the candidates tied for office shall appear on the ballot.

SEC. 11. In the event of a controversy arising concerning any election, it shall be referred to and decided by the Regional Joint Committee, acting as a Rules Committee.

SEC. 12. Immediately following the counting of ballots, the Regional Joint Committee, acting as a Rules Committee, shall prepare an election certificate, a copy of which shall be furnished each representative elected, copies posted on all bulletin boards carrying Clerks' notices and copies furnished to the management.

ARTICLE V.

LOCAL COMMITTEES.

SECTION 1. The representatives on each Division and in each General Superintendent's Department shall constitute the Local Committee on that Division or in that Department and shall meet prior to June 7th each year to elect officers for the ensuing year. At this meeting each Local Committee shall elect a Chairman, Vice-Chairman and Secretary from their number to serve for one (1) year, only those who are

to serve on the Local Committee in the ensuing year or after being eligible to participate.

SEC. 2. Meetings of the Local Committees may be called by their Chairman as occasion demands.

ARTICLE VI.

GENERAL COMMITTEES.

SECTION 1. The Chairmen of the Local Committees on the various Divisions of a General Division shall constitute the General Committee on that General Division; similarly the Chairmen of the General Superintendents' Department Committees on the Region shall constitute the General Committee of those Departments. These Committees shall meet prior to June 14th each year to elect officers for the ensuing year. At this meeting, each General Committee shall elect by a majority vote a Chairman, Vice-Chairman, and Secretary from their number, to serve for one (1) year, only those who are to serve on the General Committee in the ensuing year being eligible to participate.

SEC. 2. Meetings of the General Committees may be called by their Chairmen as occasion demands.

ARTICLE VII.

THE REGIONAL COMMITTEE.

SECTION 1. The Chairmen of the General Committees on the Region, together with the Chairman of the Local Committee on the Philadelphia Terminal Division and the Chairman of the General Committee in the General Superintendents' Departments on the Region, shall constitute the Regional Committee. The Regional Committee, so constituted, together with the Chairmen of the Local Committees on the Region, shall meet prior to June 21st for the purpose of electing by a majority vote from the Regional Committee,

a Regional Chairman, Regional Vice-Chairman and Regional Secretary to serve for one (1) year, only those who are to serve as Local and General Chairmen in the ensuing year being eligible to participate.

SEC. 2. Meetings of the Regional Committee may be called by its Chairman as occasion demands.

ARTICLE VIII.

THE REGIONAL JOINT COMMITTEE.

SECTION 1. The Regional Committee, together with an equal number of representatives appointed by the management, shall constitute the Regional Joint Committee.

SEC. 2. The officers of the Regional Joint Committee shall consist of a Chairman and Vice-Chairman who shall be elected for terms of six (6) months each. The election will be held at the regular meeting of the Committee in July and January of each year and the Chairman and Vice-Chairman will take office immediately upon election.

SEC. 3. The office of Chairman shall be filled alternately from the representatives of the management and the representatives of the employes on the Regional Joint Committee. While the office of Chairman is being filled by a representative of the management, the office of Vice-Chairman shall be filled by a representative of the employes; and, in like manner, when the office of Chairman is being filled by a representative of the employes, the office of Vice-Chairman shall be filled by a representative of the management.

SEC. 4. A Secretary shall be appointed by the Regional Joint Committee who shall not be a member of the Committee.

SEC. 5. Stated meetings of the Regional Joint Committee shall be held on the fourth Monday, bimonthly, throughout the year, commencing with the July meeting each year.

SEC. 6. Special meetings of the Regional Joint Committee may be called by the Chairman or, in his absence, by the Vice-Chairman, as occasion demands.

SEC. 7. The management and the employes will have equal voting power on the Regional Joint Committee and not less than two-thirds vote will be necessary to reach a decision.

SEC. 8. A quorum of the Regional Joint Committee shall consist of not less than four (4) representatives of the management and four (4) representatives of the employes.

SEC. 9. In the event, at any meeting of the Regional Joint Committee, one or more members are absent and their absence destroys the balance of representation between the management and employes, the committee shall decide how to re-establish that balance.

ARTICLE IX.

THE REGION COUNCIL.

SECTION 1. The Chairmen of the Local Committees on the Region shall constitute the Region Council.

SEC. 2. The Chairman and Vice-Chairman of the Regional Committee shall act in their respective capacities as officers of the Region Council.

SEC. 3. The Region Council shall meet at the call of its Chairman when, in his judgment, the occasion demands or when he is instructed to do so by a majority vote of the Regional Committee.

SEC. 4. The Region Council shall negotiate with the management changes in rates of pay or working

conditions and act upon such other matters as may from time to time be referred to it.

SEC. 5. A quorum of the Region Council shall consist of not less than a majority of the members thereof.

ARTICLE X.

PROCEDURE FOR ADJUSTMENT.

SECTION 1. Employes coming within the scope of these By-Laws shall first handle all matters with their immediate superior officer.

SEC. 2. Employes on Divisions or in General Superintendents' Departments not satisfied with the decision of their immediate superior officer on any controversial matter may place the matter in the hands of the Local Committee on their Division or in their Department for further action.

SEC. 3. Local Committees on Divisions shall arrange to handle matters referred to them, as provided in Section 2 of this Article, with the Superintendent of their respective Division if they deem it proper.

SEC. 4. Local Committees in General Superintendents' Departments shall arrange to handle matters referred to them, as provided in Section 2 of this Article, with their respective General Superintendent, if they deem it proper.

SEC. 5. In the event that any Local Committee on a Division cannot reach a satisfactory settlement with their Superintendent on any controversial matter, a joint submission shall at once be prepared showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.
(3) Position of Local Committee.
(4) Position of Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the Local Committee to their General Committee.

(*b*) By the Superintendent to his General Superintendent.

SEC. 6. In the event that any Local Committee in a General Superintendent's Department cannot reach a satisfactory settlement with their General Superintendent on any controversial matter, a joint submission shall at once be prepared showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.
(3) Position of Local Committee.
(4) Position of General Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the Local Committee to the Regional Committee.

(b) By the General Superintendent to the General Manager.

NOTE:—This method of procedure will also apply to the Philadelphia Terminal Division.

SEC. 7. The General Committees shall arrange to handle matters referred to them, as provided in Section 5 of this article, with the General Superintendent of their respective General Division.

SEC. 8. In the event any General Committee cannot reach a satisfactory settlement with their General Superintendent on any controversial matter, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.
(3) Position of General Committee.
(4) Position of General Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the General Committee to the Regional Committee.

(*b*) By the General Superintendent to the General Manager.

SEC. 9. The Regional Committee shall arrange to handle matters referred to it, as provided in Sections 6 and 8 of this article, with the General Manager.

SEC. 10. In the event the Regional Committee cannot reach a satisfactory settlement with the General Manager on any controversial matter, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.
(3) Position of Regional Committee.
(4) Position of General Manager.

A copy of this joint submission shall be forwarded by the Regional Committee to the Secretary of the Regional Joint Committee for promulgation to all members of said committee.

SEC. 11. Matters relating to interpretation of regulations, that are agreed upon between any Superintendent, General Superintendent or the General Manager and his respective committee, shall be referred directly to the Regional Joint Committee for review in the form of a joint submission showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.

A copy of this joint submission shall be forwarded by the committee in question to the Secretary of the Regional Joint Committee for promulgation to all members of said committee.

SEC. 12. Matters realting to interpretation of regulations, where no interpretation has been given by the Regional Joint Committee, and where there is a disagreement between any Superintendent, General Superintendent or the General Manager and his respective committee, shall be referred directly to the Regional Joint Committee for decision in the form of a joint submission showing:

(1) Question at issue.
(2) Joint Statement of agreed-upon facts.
(3) Position of the committee in question.
(4) Position of the Superintendent or General Superintendent in question or the General Manager.

A copy of this joint submission shall be forwarded by the committee in question to the Secretary of the Regional Joint Committee for promulgation to all members of said committee.

SEC. 13. The Regional Joint Committee shall handle matters referred to it as provided in Sections 10, 11 and 12 of this article.

SEC. 14. In case a decision is not reached by the Regional Joint Committee, on any controversial matter, after two meetings of said committee have attempted to settle it, further procedure will be determined upon at the time of the second disagreement.

SEC. 15. In handling controversial matters, the Local Committee on the Philadelphia Terminal Division shall combine the functions of a Local Committee with those of a General Committee in meeting with their Superintendent.

Article XI.

REMOVAL FROM OFFICE.

Section 1. Any representative who violates the rules of this Association or is guilty of conduct prejudicial to its welfare or interest, may be placed on trial on written charges preferred by any other representative of this Association. Such charges shall be addressed to the Secretary of his respective General Committee, or the Regional Committee, which will become the trial committee.

Such committee shall give the accused at least ten (10) days' written notice by registered mail of the charges and the time and place of the trial thereon. After giving the representative accused an opportunity of being heard, and upon proof at the trial of such charges, the trial committee shall have the power to suspend or expel such representative upon a two-thirds vote.

Article XII.

GENERAL.

Section 1. In all cases where a meeting of a committee is scheduled for a certain day and that day is a holiday, the day immediately following shall be substituted.

Sec. 2. Unless otherwise specified, terms of representatives and of all committee officers shall date from the first day of July following their election.

Sec. 3. Matters may be referred to the various committees by officials of the Company.

Sec. 4. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner without fear that his individ-

ual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

SEC. 5. All Local and General Committees and the Regional Committee shall give the respective Company officers, with whom they meet, not less than five (5) days notice of matters they wish to handle with said Company officers; and, in like manner, all Company officers shall give not less than five (5) days notice of matters they wish to handle with said respective committees.

ARTICLE XIII.

AMENDMENTS.

SECTION 1. Amendments to these By-Laws may be made by the Regional Joint Committee after thirty (30) days notice of the proposed amendments has been given all members of said committee.

SEC. 2. Amendments to these By-Laws may be proposed by any member of the Regional Joint Committee, by the Regional Committee, any General Committee or Local Committee or by petition of any fifty (50) members of this Association to the Regional Joint Committee.

These By-Laws shall regulate the relations between the management of the Pennsylvania Railroad System, Eastern Region, and the members of this Association on and after February 1, 1923, and shall continue in full force and effect until either party gives thirty (30) days notice to the other of a desire to change.

For the Management:	For the Employes:
C. S. Krick, *General Manager,* *Eastern Region,* *Pennsylvania Railroad System.*	M. T. Miller, *Chairman.* C. C. English, *Vice Chairman.* J. A. McLaughlin, *Secretary.* E. N. Crumbling. I. G. Fell. P. J. Cunningham.

Regional Committee representing Clerical Forces in the Operating Department under the jurisdiction of General and Division Superintendents, Eastern Region, Pennsylvania Railroad System.

EXHIBIT "J."
(Filed October 19, 1923.)

PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION

NEW JERSEY DIVISION
EASTERN PENNSYLVANIA DIVISION
SOUTHERN DIVISION
CENTRAL PENNSYLVANIA DIVISION
PHILADELPHIA TERMINAL DIVISION

REGULATIONS
FOR THE GOVERNMENT
OF
OFFICE, STATION, WAREHOUSE,
STOREHOUSE AND ELEVATOR
FORCES, AND ENGINE
AND TRAIN CREW CALLERS,
EXCLUDING CLERICAL AND
SUPERVISORY FORCES

EFFECTIVE MARCH 28, 1923

AND

BY-LAWS
OF
THE PENNSYLVANIA SYSTEM
MISCELLANEOUS FORCES'
ASSOCIATION
OF THE
OPERATING DEPARTMENT
EASTERN REGION

EFFECTIVE MARCH 28, 1923

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PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION
NEW JERSEY DIVISION
EASTERN PENNSYLVANIA DIVISION
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CENTRAL PENNSYLVANIA DIVISION
PHILADELPHIA TERMINAL DIVISION

REGULATIONS FOR THE GOVERNMENT OF OFFICE, STATION, WAREHOUSE, STOREHOUSE AND ELEVATOR FORCES, AND ENGINE AND TRAIN CREW CALLERS, EXCLUDING CLERICAL AND SUPERVISORY FORCES

PREAMBLE.

These regulations are for the government of the following classes of employes on the Pennsylvania Railroad System, Eastern Region:

Employes affected.

(1) Train and engine crew callers, train announcers, gatemen, baggage and parcel room checkers, and other baggage and parcel room employes (other than clerks).

(2) Janitors, elevator and telephone switchboard operators, office, station and warehouse watchmen and employes engaged in assorting waybills and tickets, operating appliances or machines for perforating, addressing envelopes, numbering claims and other papers, gathering and distributing mail, adjusting dictaphone cylinders and similar work; also, messengers and station attendants.

(3) Station, platform, warehouse, grain elevator, transfer, dock, pier, storehouse, stock-room and team track freight handlers or truckers, stowers or stevedors, callers or loaders, coopers, sealers, scalers or weighers, and others similarly employed.

(4) Laborers in and around stations, storehouses and warehouses.

EXCEPTIONS.

These regulations do not apply to:

(*a*) Individuals who are paid varying amounts for special service which takes only a portion of their time from outside employment or business, or individuals performing personal service not a part of the duty of the carrier, such as "red caps," "travelers' aides," etc.

(*b*) Supervisory forces.

NOTE.—Employes covered by Section (*b*) will, however, retain their seniority as provided in Regulation 3-F-1.

REGULATION NO. 1—PROMOTION.

Promotion basis.

1-A-1. Ability, fitness and seniority entitle employes to promotion as opportunity may offer. The management shall decide whether the candidate or applicant is qualified therefor. Employes passed around for promotion will, if they so desire, be given a competitive examination.

1-A-2. Except as provided in Regulation 3-E-2, employes are entitled to promotion only in the district over which their seniority prevails.

Declining promotions.

1-A-3. Employes declining promotions or declining to bid for a bulletined position will not lose their seniority.

Failure to qualify.

1-A-4. Subject to the provisions of Regulation 1-A-1, employes will be awarded bulletined positions in accordance with ability, fitness and seniority, which will be determined by the management, and upon being awarded such bulletined positions and failing to qualify within thirty (30) days will retain their seniority, may bid on any bulletined positions thereafter, but may not displace any regularly assigned employe.

Official positions.

1-B-1. Employes will be considered for appointment to excepted, supervisory or official positions.

REGULATION NO. 2—SELECTION OF POSITIONS.

Bulletin.

2-A-1. As may be agreed upon between the management and employes, new positions or vacancies will be promptly bulletined in places accessible to all employes affected, for a period of five (5) days in the districts where they occur; bulletin to show location, title, hours of service, rate of pay and brief description of duties. Employes desiring such positions will file their applications with the designated official within that time, and an assignment will be made within five (5) days thereafter. The name of the successful applicant will, immediately thereafter, be posted for a period of five (5) days where the position was bulletined.

Positions of a direct or confidential nature will not be bulletined. The duties of such positions will govern, the appointing officer to be the judge subject to the approval of the Superintendent or General Superintendent.

NOTE.—Regulations 2-A-2, 2-A-3, 2-A-4, 2-A-5 and 2-A-6 are applicable, subject to the provisions of Regulation 2-A-1.

Former position vacant.

2-A-2. When an employe bids for and is awarded a permanent position his former position will be declared vacant and bulletined. Such employe cannot make application for a position he has just vacated, but if the position is vacated by the employe who fills the vacancy he may then make application and his application will be considered.

Temporary appointment.

2-A-3. Bulletined positions may be filled temporarily pending an assignment, and in event no applications are received may be permanently filled without regard to these regulations.

Vacancy.

2-A-4. Positions or vacancies of sixty (60) days or less duration, will be considered temporary, and may be filled without bulletining.

Positions or vacancies of indefinite duration need not be bulletined until the expiration of sixty (60) days from the date of employment or vacancy.

Positions or vacancies known to be of more than sixty (60) days duration will be bulletined and filled in accordance with these regulations.

Bidding after absence.

2-A-5. An employe returning after leave of absence, sickness or disability, may return to his former position. If for any reason he does not desire his former position, he may upon his return, or within five (5) days thereafter, exercise seniority to any position bulletined during his absence, unless in the judgment of his superior officer an injustice will be done any other employes who have been moved or changed during his absence. Employes displaced by his return may exercise their seniority in the same manner.

More than one vacancy.

2-A-6. When more than one (1) vacancy or new position exists at the same time, employes shall have the right to bid on any or all, stating preference. (Except as specfied in Regulation 2-A-2, nothing in this regulation shall be construed to prevent employes bidding on all bulletined positions, irrespective of whether the position is of the same, greater or lesser renumeration.)

REGULATION NO. 3—SENIORITY.

Seniority.

3-A-1. Except as provided in Regulation 3-E-2, seniority begins at the time the employe's pay starts in the department or class.

Seniority districts.

3-B-1. Seniority districts of defined limits will be established by mutual agreement between the management and the employes affected.

Reducing force.

3-C-1. When reducing forces seniority will govern, subject to the provisions of Regulation 1-A-1. When employes are to be furloughed or relieved from service on account of reduction in force, at least thirty-six (36) hours advance notice will, if practicable, be given. When forces are increased, employes who have been relieved will be given preference in re-employment, if available and previous service has been satisfactory.

Roster.

3-D-1. A seniority roster of all employes in each seniority district will be posted in places accessible to all employes affected. The rosters will be revised and posted in January of each year, and will be open to correction for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employe or his representative, such error will be corrected. A copy of the roster will be furnished to the representative of the employes upon request.

Roster, preparation of.

3-D-2. Seniority rosters will show the name and date of entry of employes into the service and date entered department or class, except that laborers will not be included and their seniority will not apply until they have been in continuous service of the railroad in excess of six (6) months.

Filing applications.

3-E-1. Employes filing applications for positions in other groups in the same seniority district, or in other seniority districts, will, if they possess the necessary qualifications, be given preference over non-employes; also employes covered by any other regulations.

Transferring.

3-E-2. Except as provided in Regulation 3-F-1, employes transferred from one seniority district to another at the instance of the management will carry their seniority with them to the district to which transferred and will forfeit seniority in the district from which transferred, except that in reduction of force, if no position is available in the district to which transferred, seniority may be exercised in the district from which transferred.

Employes filing applications, and awarded positions in other seniority districts, will rank from date of transfer on the seniority roster of district to which transferred, and in reduction in force, if no position

is available in the district to which transferred, may exercise seniority in the district from which transferred.

Change in seniority districts.

3-E-3. In the event of a change in seniority districts, the seniority of employes affected will be adjusted in the revised districts by the management and employes affected.

Positions abolished.

3-E-4. Except as provided in Regulation 2-A-5, employes whose positions are abolished or whose starting time is permanently changed more than one (1) hour may, within ten (10) working days after date of notification, exercise their seniority over junior employes. Other employes affected may in like manner exercise seniority over junior employes. Employes failing to exercise seniority within the prescribed time limit will retain their seniority, may bid on bulletined positions thereafter, but cannot displace any regularly assigned employes.

Excepted positions.

3-F-1. Employes appointed to or now filling supervisory or official positions shall retain and continue to accumulate seniority in the district from which appointed.

Exercising seniority.

3-G-1. The exercise of seniority in reduction of force or displacing junior employes provided for in these regulations, is subject to the provisions of Regulation 1-A-1.

Seniority cannot be exercised to displace the incumbents of positions of a direct or confidential nature.

REGULATION NO. 4—TIME ALLOWANCES.

Day's work. Overtime.

4-A-1. Eight (8) hours work shall constitute a day.

For hourly rated employes, service in excess of eight (8) hours work on any day, exclusive of meal

period, will be paid for as overtime at pro-rata rates for the 9th and 10th hours of continuous service and at rate of time and one-half thereafter.

For other than hourly rated employes, service rendered in excess of working hours in pay period (number of working days paid for times eight) will be paid for as overtime at pro-rata rates until the hours worked exceed the number of hours produced by multiplying by ten the working days paid for; thereafter at rate of time and one-half. Sunday, or other assigned day of rest, as well as New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas, will not be considered as working days under this regulation. Overtime, as defined above, with a minimum of three (3) hours at pro-rata rates for two (2) hours work or less, will be allowed for service performed on these days, as well as for calls as provided in Regulation 4-C-1, except that when assigned to work the full number of hours constituting the regular week-day assignment on Sundays, as well as Holidays, the guaranteed minimum of three (3) hours pay for two (2) hours work or less will not apply. In case certain working days, or part days, are allowed off duty with pay, time worked on Sundays, Rest Days or Holidays, as well as calls provided in Regulation 4-C-1, shall be used to offset such time off duty with pay.

Intermittent service.

4-A-2. Where service is intermittent or does not require continuous application, overtime, as provided in Regulation 4-A-1, will be allowed for all time actually worked in excess of eight (8) hours within a spread of twelve (12) consecutive hours, and for all

time in excess of twelve (12) hours computed continuously from the time first required to report for duty until final release at end of day. Time shall be counted as continuous service in all cases where the interval of release from duty at any one time is less than one (1) hour.

Hourly rated employes.

4-A-3. Hourly rated employes whose seniority entitles them to regular employment required to report at regular starting time and place for a day's work and when conditions prevent work being performed will be allowed a minimum of three (3) hours pay at pro-rata rates. If held on duty over three (3) hours actual time so held will be paid for. If required to work any part of the time so held and through no fault of their own are released before a full day's work is performed, will be paid not less than eight (8) hours pay unless they lay off of their own accord. This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be handled by regular forces. Neither will it apply to certain days of the week where, in a given office or department, it is the practice to let employes off for a portion of the eight-hour day, nor when forces are worked on a short-time basis, when actual hours worked will be paid for.

Nothing in this regulation will be construed to prohibit the establishment of assignments of less than eight (8) hours on Sunday or other assigned day of rest, as well as New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas, with a minimum allowance of

three (3) hours for two (2) hours work or less and at pro-rata rates thereafter.

Meal period.

4-A-4. Except in special cases, authorized by the Management, or where regular operations require eight (8) consecutive hours of work, the meal period will not be less than thirty (30) minutes nor more than one (1) hour.

4-A-5. If the meal period is not allowed within the usual limits and is worked, time within which to eat will be afforded at the first opportunity.

Starting time.

4-B-1. Regular assignments shall have a fixed starting time and, except in emergency, the regular starting time shall not be changed without at least sixteen (16) hours notice to the employes affected.

4-B-2. Where three consecutive shifts are worked covering the twenty-four (24) hour period no shift will have a starting time after 12 o'clock midnight and before 5 A. M.

Notified or called.

4-C-1. Except as provided in Regulation 4-A-1, employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less; time held on duty in excess of two (2) hours to be paid for at pro-rata rates.

4-C-2. Employes who have completed their work period for the day and have been released from duty required to return for further service may, if conditions justify, be paid as if on continuous duty.

Absorbing overtime.

4-D-1. Employes will not be required to suspend work during regular hours to absorb overtime.

Authorizing overtime.

4-D-2. No overtime hours will be worked except by direction of proper authority.

Notified when disallowed.

4-E-1. When time is claimed in writing and such claim is disallowed the employe making the claim shall be notified in writing and reason for non-allowance given.

Day of rest.

4-F-1. So far as practicable, consistent with the requirements of the service, employes shall be allowed one day of rest (not necessarily Sunday) in seven. When the assigned day of rest for an employe is other than Sunday, Regulation 4-A-1 will apply to such assigned day.

Attending court.

4-G-1. When attending court as a witness for the railroad, an employe will be allowed compensation equal to what would have been earned had such interruption not taken place, and in addition necessary actual expenses while away from headquarters. All fees and mileage accruing to the witness will be assigned to the railroad.

Service other than regular duties.

4-H-1. Employes temporarily assigned to higher rated positions will receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions will not have their rates reduced.

A "temporary assignment" contemplates the fulfillment of all the duties and the assumption of all the

responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

Established Rates.

4-I-1. Rates established shall not be discontinued and new ones created covering relatively the same class of work, for the purpose of reducing rates of pay or evading the application of these regulations.

REGULATION NO. 5 —HANDLING OF EMPLOYES.

Applications.

5-A-1. The applications of new employes shall be approved or disapproved within ninety (90) days after the applicant begins work.

In the event of applicant giving false information, this regulation shall not apply.

REGULATION NO. 6—DISCIPLINE.

How imposed.

6-A-1. Employes will not be suspended nor dismissed from the service without a fair and impartial trial. Neither will they be held off duty for minor offenses, pending investigation or decision. If found not guilty employe will be compensated for the wage loss suffered, if any.

Advice of cause.

6-B-1. An employe will, on request, be given a letter stating cause of discipline.

6-C-1. If an employe is suspended, the suspension will date from time taken out of service. Date of suspension.

REGULATION NO. 7—APPEALS.

7-A-1. An employe who considers that an injustice has been done him and who has appealed his case in writing to his Superintendent within ten (10) days of notification, will be given a hearing at which he may be accompanied by an employe from the division on which he is employed, to assist him in presenting his case. After his appeal has been acted upon by the Superintendent, he may, if he so desires, be represented before the Superintendent, General Superintendent and General Manager by a committee representing employes covered by these regulations. Right of appeal.

REGULATION NO. 8—MISCELLANEOUS.

8-A-1. Efforts will be made to furnish employment (suited to their capacity) to employes who have become physically unable to continue in their present positions, provided they have served a sufficient time with the Company to warrant, in the judgment of the management, their being so placed. Incapacitated employes.

REGULATION NO. 9—NOTICE OF CHANGE IN REGULATIONS.

9-A-1. Should either the management or the employes desire to change any or all of these regulations, the party desiring to make the change shall notify the other party in writing of the desired change; and no Change in regulations.

change will be made, except by mutual consent, until thirty (30) days after such notice has been given.

FOR THE MANAGEMENT:
C. S. KRICK,
General Manager, Eastern Region, Pennsylvania Railroad System.

FOR THE EMPLOYES:
E. H. NOLICK,
Regional Chairman, Eastern Region; General Chairman, Cent. Penna. Div.

B. C. BOWMAN,
Chairman, Williamsport Division.

BENJ. MORGAN,
Chairman, Sunbury Division.

S. B. CLENDENIN,
Chairman, Elmira Division.

J. S. CLEMENS,
Chairman, Schuylkill Division.

A. L. MAUGANS,
General Chairman, East. Penna. Div.

JOHN R. GARVERICK,
Chairman, Philadelphia Division.

A. WORSING,
Chairman, Cresson Division.

A. CLEAR,
Chairman, Middle Division.

H. D. SMITH,
Chairman, Tyrone Division.

J. B. MARQUART,
Chairman, Cumberland Valley Division.

S. M. HILL,
General Chairman, New Jersey Division. Chairman, Atlantic Division.

EDWIN A. FOARD,
Chairman, New York Division.

C. W. GERMERSHAUSER,
Chairman, Trenton Division.

H. N. SNOWDEN,
Chairman, Trenton Shops.

GEORGE S. STOW,
Chairman, P. & C. Ferry.

J. A. MCLAUGHLIN,
General Chairman, Southern Division. Chairman, Maryland Division.

M. W. FLINCHBAUGH,
Chairman, Baltimore Division.

H. E. HUDSON,
Chairman, Delaware Division.

R. T. GASKINS,
Chairman, Norfolk Division.

J. R. RANAGOB,
Chairman, Philadelphia Terminal Div.

Committee representing Office, Station, Warehouse, Storehouse and Elevator Forces, and Engine and Train Crew Callers, excluding Clerical and Supervisory Forces, Eastern Region, Pennsylvania Railroad System.

THE PENNSYLVANIA SYSTEM

MISCELLANEOUS FORCES'

ASSOCIATION

OF THE

OPERATNG DEPARTMENT

EASTERN REGION

BY-LAWS

EFFECTIVE MARCH 28, 1923.

THE PENNSYLVANIA SYSTEM
MISCELLANEOUS FORCES'
ASSOCIATION
OF
THE OPERATING DEPARTMENT
EASTERN REGION
New Jersey Division
Eastern Pennsylvania Division
Southern Division
Central Pennsylvania Division
Philadelphia Terminal Division

COPY OF MEMORANDUM OF UNDERSTANDING COVERING METHOD TO BE FOLLOWED IN THE HANDLING OF QUESTIONS BETWEEN THE PENNSYLVANIA SYSTEM MANAGEMENT, EASTERN REGION, AND ITS EMPLOYES IN MISCELLANEOUS FORCES

PREAMBLE.

In order to form an organization to establish satisfactory working conditions, adjust differences as they may arise and promote a mutual understanding between the officers of the Pennsylvania System, Eastern Region, and the miscellaneous forces (as noted in title) in the Operating Department under General and Division Superintendents, Eastern Region, these by-laws are hereby adopted.

This plan for handling all matters can be successful only by full conscientious co-operation on the part of both the management and employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting these matters.

Title.

This organization shall be known as the PENNSYLVANIA SYSTEM MISCELLANEOUS FORCES' ASSOCIATION OF THE OPERATING DEPARTMENT, EASTERN REGION.

NOTE.—Miscellaneous forces include employes enumerated in Sections 1, 2, 3 and 4 of the preamble of Regulations for the Government of Office, Station, Warehouse, Storehouse and Elevator Forces and Engine and Crew Callers, effective March 28, 1923.

ARTICLE I.

Membership.

SECTION 1. All employes who are actively engaged in the miscellaneous forces (as noted above) in the Operating Department under General and Division Superintendents, Eastern Region, Pennsylvania System, who have been in the service of the Company for six months or more, and who are not in the following class, are entitled to membership in this Association:

(*a*) Those who because of work of a special nature devote only part of their time to the Company and are paid special rates therefor.

SEC. 2. Membership in this Association shall terminate on severance of employment in the service of the Company.

ARTICLE II.

Representation.

SECTION 1. Those who may participate in this Association, as enumerated in Article I, Section 1, on each division shall be entitled to elect from among the employes under General and Division Superintendents, Eastern Region, three representatives and, in like manner, those under each General Superintendent

shall be entitled to three representatives. Representatives elected from among the employes as defined in this article, who are not members of this Association, shall be eligible to membership during their tenure of office as representatives.

SEC. 2. The representatives elected at the General Election in June, 1921, shall hold office for one, two and three years. The representative receiving the highest number of votes, three years; the representative receiving the next highest number of votes, two years, and the representative receiving the next highest number of votes, one year. Representatives elected each year thereafter shall serve for a period of three years. Representatives shall be eligible for re-election.

SEC. 3. A representative shall be deemed to have vacated office upon severance of active relations with the Company or upon assuming a status as enumerated in Article I, Section 1, paragraph (*a*).

SEC. 4. In case of vacancies on a Local Committee the vacancy shall be filled by the remaining members of the committee. In the event they cannot reach a decision, the General Division Chairman shall cast the deciding vote. In the event that there are two or more vacancies occurring on one Local Committee at the same time, the vacancies so occurring shall then be filled by the General Committee. The representative or representatives thus selected shall serve until the next election.

ARTICLE III.

Qualifications of Voters and Representatives.

SECTION 1. All employes who are entitled to participate in this Association, referred to in Article I,

shall be entitled to petition for nominees and vote at all elections.

SEC. 2. Those employes who are entitled to participate in this Association who have had two years of active service with the Company prior to the date of election who are American citizens, and who are 21 years of age or over on the date of election, shall be eligible to the office of representative.

ARTICLE IV.

Nominations and Elections.

SECTION 1. Nominations and elections shall be held annually in the month of May.

SEC. 2. Nominations shall be held on the first Monday and election on the third Monday in the month named. In the event of either of these days being a holiday, the day immediately following shall be substituted.

SEC. 3. Nominations and elections shall be conducted by the members of this Association in accordance with rules and regulations prescribed by the Regional Joint Committee, acting as a Rules Committee, with only such assistance from the management as may be required by said Committee.

SEC. 4. Elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any fraud in the counting of ballots.

SEC. 5. Nominations shall be by petition. Petitions signed by twenty-five (25) qualified voters on a Division where there are more than one hundred (100) qualified voters, or by twenty-five per cent. (25%) of

the qualified voters on a Division where there are less than one hundred (100) qualified voters, shall be sufficient to place the name of the one petitioned for upon the ballot for that Division.

SEC. 6. The election ballot for each Division or General Division shall contain the names of all those placed in nomination as a result of petition on that Division or General Division.

SEC. 7. The number of candidates for which a voter is entitled to vote shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

SEC. 8. The voter shall indicate his preference on the election ballot by placing a cross (×) opposite the name or names of the candidates he wishes to elect. Any other mark or marks shall render the ballot void.

SEC. 9. The Regional Joint Committee, acting as a Rules Committee, shall determine:

(*a*) The type and location of ballot boxes and voting booths.

(*b*) The hours during which the voting will be conducted.

(*c*) The form of letter ballot to be used by those voting by mail.

(*d*) The conditions under which a voter will be permitted to vote by mail.

SEC. 10. The candidate or candidates receiving the highest number of votes shall be declared elected. In the event of a tie, the Regional Joint Committee, acting as a Rules Committee, shall order a special election to break the tie.

SEC. 11. In the event of a controversy arising concerning any election, it shall be referred to and decided

by the Regional Joint Committee, acting as a Rules Committee.

SEC. 12. Immediately following the counting of ballots, the Regional Joint Committee, acting as a Rules Committee, shall prepare an election certificate, a copy of which shall be furnished each representative elected, a copy posted on convenient bulletin board, and a copy furnished to the Division Superintendent.

ARTICLE V.

Local Committees.

SECTION 1. The elected representatives on each Division and General Division shall constitute the Local Committee on that Division or General Division and shall meet on the first Wednesday in June of each year for the purpose of organizing. At this meeting, each Local Committee shall elect a Chairman, Vice Chairman and Secretary from their number to serve for one year.

SEC. 2. Meetings of the Local Committees may be called by their Chairmen as occasion demands.

ARTICLE VI.

General Committees.

SECTION 1. The Chairmen of the Local Committees on the various Divisions shall constitute a General Committee for that General Division, and shall meet on the second Wednesday in June of each year for the purpose of organizing. At this meeting, each General Committee shall elect a Chairman, Vice Chairman and

Secretary from their number to serve for one year. General Chairman-elect, unless subsequently elected Regional Chairmen, must retain their Local Chairmanship.

SEC. 2. Meetings of the General Committees may be called by their Chairmen as occasion demands.

ARTICLE VII.
The Regional Committee.

SECTION 1. The Chairmen of the General Committees on a Region together with a representative elected by the Chairmen of the General Superintendents' Department Committees, from among their number, shall constitute the Regional Committee and shall meet on the third Wednesday in June of each year for the purpose of organizing. At this meeting the Committee shall elect from their number a Chairman, Vice Chairman and Secretary to serve for one year.

SEC. 2. Meetings of the Regional Committee may be called by their Chairman as occasion demands.

ARTICLE VIII.
The Regional Joint Committee.

SECTION 1. The Regional Committee, together with an equal number of representatives appointed by the management, shall constitute the Regional Joint Committee.

SEC. 2. The officers of the Committee shall consist of a Chairman and Vice Chairman who shall be elected for terms of six months each. The election will be held at the regular meeting of the Committee in July and January of each year and the Chairman and Vice Chairman will take office immediately upon election.

SEC. 3. The office of the Chairman shall be filled alternately from the representatives of the management and the representatives of the employes. While the office of Chairman is being filled by a representative of the management the office of Vice Chairman shall be filled by a representative of the employes; likewise when the office of Chairman is being filled by a representative of the employes the office of Vice Chairman shall be filled by a representative of the management.

SEC. 4. Stated meetings of the Regional Joint Committee shall be held on the fourth Wednesday, bimonthly, throughout the year, commencing with the July meeting each year.

SEC. 5. Special meetings of the Regional Joint Committee may be called by the chairman as occasion demands.

SEC. 6. The management and the employes will have equal voting power and not less than two-thirds vote will be necessary to reach a decision.

SEC. 7. Six (6) voting members will constitute a quorum.

SEC. 8. In the event it is found at any meeting of the Committee that one or more members are not represented, thus destroying the even balance of the Committee, the Committee itself shall decide how to re-establish that balance.

ARTICLE IX.

The General Conference Committee.

SECTION 1. The elected representatives on all Divisions and General Divisions shall constitute the membership of the General Conference Committee. By

virtue of their respective offices the Regional Chairman, Regional Vice Chairman and Regional Secretary shall serve the General Conference Committee in like capacity.

SEC. 2. This Committee shall assemble for exchange of ideas and expressions for mutual benefit; shall adopt uniform methods of administering the business of the General Conference and rules governing procedure while in session. It shall also determine all questions of policy affecting this Association and is hereby designated the supreme legislative body thereof.

SEC. 3. Meetings of the General Conference Committee may be called by the Chairman as occasion demands.

SEC. 4. A quorum of the General Conference Committee shall consist of not less than a majority of the members thereof.

ARTICLE X.

Procedure for Adjustment.

SECTION 1. Employes coming within the scope of these By-Laws shall first handle all matters with their immediate superior officer.

SEC. 2. Employes on Divisions not satisfied with the decision of their immediate superior officer on any controversial matter may place the matter in the hands of the Local Committee on their Division for further action.

SEC. 3. Employes in General Superintendents' Departments not satisfied with the decision of their immediate superior officer on any controversial matter

may place the matter in the hands of the General Committee on their General Division for further action.

SEC. 4. The Local Committees shall arrange to handle matters referred to them, as provided in Section 2 of this Article, with employe's immediate superior or Superintendent of their respective Division, if they deem it proper.

SEC. 5. In the event that any Local Committee cannot reach a satisfactory settlement with their Superintendent on any controversial matter, a joint submission shall at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of Local Committee.
(4) Position of Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the Local Committee to their General Committee.

(*b*) By the Superintendent to his General Superintendent.

SEC. 6. The General Committees shall arrange to handle matters referred to them, as provided in Sections 3 and 5 of this Article, with the General Superintendent of their respective General Division.

SEC. 7. In the event any General Committee cannot reach a satisfactory settlement with their General Superintendent on any controversial matter, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of General Committee.
(4) Position of General Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the General Committee to the Regional Committee.

(*b*) By the General Superintendent to the General Manager.

SEC. 8. The Regional Committee shall arrange to handle matters referred to it, as provided in Section 7 of this Article, with the General Manager.

SEC. 9. In the event the Regional Committee cannot reach a satisfactory settlement with the General Manager on any controversial matter, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of Regional Committee.
(4) Position of General Manager.

A copy of this joint submission shall be forwarded by the Regional Committee to the Secretary of the Regional Joint Committee for promulgation to all members of said Committee.

SEC. 10. Matters relating to interpretation of regulations, that are agreed upon between any Superintendent, General Superintendent or the General Manager and his respective Committee, shall be referred directly to the Regional Joint Committee for review in the form of a joint submission showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.

A copy of this joint submission shall be forwarded by the Committee in question to the Secretary of the Regional Joint Committee for promulgation to all members of said Committee.

SEC. 11. Matters relating to interpretation of regulations, where no interpretation has been given by the Regional Joint Committee, and where there is a disagreement between any Superintendent, General Superintendent or the General Manager and his respective Committee, shall be referred directly to the Regional Joint Committee for decision in the form of a joint submission showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of the Committee in question.
(4) Position of the Superintendent or General Superintendent in question, or the General Manager.

A copy of this joint submission shall be forwarded by the Committee in question to the Secretary of the Regional Joint Committee for promulgation to all members of said Comittee.

SEC. 12. The Regional Joint Committee shall handle matters referred to it as provided in Sections 9, 10 and 11 of this Article.

SEC. 13. In case a decision is not reached by the Regional Joint Committee, on any controversial matter, after two meetings of said Committee have attempted to settle it, further procedure will be determined upon at the time of the second disagreement.

SEC. 14. In handling of controversial matters, the Local Committee on the Philadelphia Terminal Division shall combine the functions of a Local Committee with those of a General Committee in meeting with their Superintendent.

ARTICLE XI.

General.

SECTION 1. In all cases where a meeting of a committee is scheduled for a certain day and that day is a holiday, the day immediately following shall be substituted.

SEC. 2. Unless otherwise specified, terms of representatives and of all committee officers shall date from July 1st of each year.

SEC. 3. Matters may be referred to the various committees by officials of the Company.

SEC. 4. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

ARTICLE XII.

Amendments.

SECTION 1. Amendments to these by-laws may be made by the Regional Joint Committee after thirty (30) days' notice of the proposed amendments has been given all members of said Committee.

SEC. 2. Amendments to these by-laws may be proposed by any member of the Regional Joint Committee, by the Regional Committee, any General Committee or Local Committee or by petition of any fifty (50) members of this Association to the Regional Joint Committee.

These by-laws shall regulate the relations between the management of the Pennsylvania System, Eastern

Region, and the members of this Association on and after March 28, 1923, and shall continue in full force and effect until either party gives 30 days' notice to the other of a desire to change.

For the Management:

C. S. KRICK,
General Manager,
Eastern Region,
Pennsylvania Railroad.

For the Employes:

E. H. MALICK,
Chairman.
G. M. HILL,
Vice Chairman.
J. R. RUDOLPH,
Secretary.
A. L. MAUGANS,
J. A. MCLAUGHLIN.

Regional Committee representing Miscellaneous Forces in the Operating Department under the jurisdiction of General and Divisional Superintendents, Eastern Region, Pennsylvania Railroad System.

EXHIBIT "K."

BEFORE THE UNITED STATES RAILROAD LABOR BOARD.

Docket No. 405—Volume II.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

VS.

PENNSYLVANIA SYSTEM.

Citation under Section 313 of the Transportation Act for violation of Decision 220, Docket 405.

Transportation Building, Chicago, Illinois.
Monday, May 28, 1923.

The hearing in the above entitled matter was resumed at 2:00 o'clock P. M.

PRESENT:

MESSRS. BEN W. HOOPER (Chairman), HORACE BAKER, R. M. BARTON, G. W. W. HANGER, SAMUEL HIGGINS, W. L. MCMENIMEN, E. F. GRABLE and A. O. WHARTON. MR. L. M. PARKER, Secretary.

APPEARANCES:

For the Employes:

E. H. FITZGERALD, grand president.
J. H. SYLVESTER, vice grand president.
H. F. BALDWIN, vice grand president.
C. R. BRICELAND, vice grand president.
J. J. FORRESTER, national legislative counsel.

For the Carrier:

SAMUEL REA, president.
E. T. WHITER, vice president.
E. H. SENEFF, general solicitor.

PROCEEDINGS.

Mr. Seneff: Mr. Chairman and gentlemen of the Board: This is a proceeding under Section 313 of the Transportation Act, the purpose being to enable the Board to determine whether its Decision 220 has been violated. Judging from the proceeding which took place here last Monday and the telegram which summoned Mr. Rea to be present, I take it that the Board desires to hear Mr. Rea further respecting the contents of that letter. Mr. Rea is here in response to the telegram which he received from the Board and is prepared to give to the Board a statement which we think will tend to clarify the situation. Mr. Rea.

The Chairman: Before Mr. Rea begins on his formal statement, I would like to anticipate him by asking a question or two in regard to that letter. Those questions may tend to bring out something that is dealt with in his statement, but if it is not dealt with in his statement, then he can deal with it orally in connection with his written formal statement.

Mr. Seneff: Governor, would there be any objection to Mr. Rea making his statement and then he will be prepared to answer any questions which may occur to the Board at the conclusion of the statement?

The Chairman: If you prefer to proceed that way, it is immaterial to the Chair. I merely thought that while he was on his feet he might supplement his written statement by replies to questions I ask him, if he sees fit, but if he desires to make his written statement first, that is agreeable to the Board.

Mr. Seneff: I think he would.

Mr. Rea: I would, yes.

The Chairman: You may proceed, Mr. Rea.

Mr. Rea: Do you wish to swear me?

The Chairman: No, sir.

STATEMENT OF MR. SAMUEL REA
On Behalf of the Carrier.

Mr. Rea: To the United States Railroad Labor Board: I understand this to be a hearing under Section 313 of the Transportation Act in order that the Board may determine whether its Decision 220 has been violated by the Pennsylvania Railroad Company. In my letter of May 18, 1923, it was assumed that for such purpose the Board was fully informed, but I therein reviewed the conditions which the management thought would induce the Board to proceed no further with this inquiry. Obviously the Board is not so disposed and, judging from what took place at the hearing on May 21st, you desire some elucidation of the contents of my letter of May 18th. This I am pleased to attempt:

1. The management, after the most careful consideration and with the unanimous approval of the board of directors as each step was taken, adopted the plan of employe representation in dealing with its employes in all matters pertaining to wages and working rules and conditions. In addition to this, our stockholders were apprised of the development of this policy in the annual reports to the stockholders for the years 1920, 1921 and 1922, respectively, each of which reports was duly approved. In adopting this plan we were satisfied at all times with the justness and propriety of our policy, and the Supreme Court of the United States in effect approved of that policy; and here let it be clearly understood, as so often misstated, that the Supreme Court expressly declined to voice any opinion upon the merits of the principles and decisions adopted and rendered by this Board.

We satisfied ourselves that the interests of the public, the railroad company, and its employes were best subserved and promoted by the adoption of this plan. It was not a policy arbitrarily adopted. It was

founded on the justifiable practice of dealing directly with our employes which, with but few exceptions, produced during seventy-five years individual peace, mutual co-operation, wages and working conditions unexcelled on any other railroad, employes with widely known reputation for courtesy and efficiency, an uninterrupted transportation service of the highest standard, and for the investing public a fair return. We then claimed, and do now claim, the inalienable and fundamental right to deal directly with our own employes respecting matters affecting their interests, since they and they only are familiar with local conditions on our railroad, the needs and desires of our employes, and requirements of the public which we serve.

2. The cardinal points of this plan of employe representation are that

(a) The employes' representatives must be individuals.

(b) They must be bona fide employes of the company.

(c) They must be selected by secret ballot.

(d) They cannot be labor organizations as such, though an employe elected by ballot is not disqualified from acting because he belongs to or is an officer of a labor organization.

3. In successive elections since Decision 220, and generally participated in to a gratifying extent by our clerical forces, this plan was followed in the selection of representatives of the clerks and miscellaneous forces as stated in my letter of May 18th. Rates of pay and working rules and conditions have been negotiated and made the subject of contracts with the representatives thus selected, and there is no dispute now pending between the management and these representatives concerning their wages or working conditions which we believe, will not be satisfactorily ad-

justed. The decision of the Supreme Court leaves no doubt of our legal right to deal with our employes in this manner, and, having adopted this plan after the most careful consideration, it is our purpose to adhere thereto because we believe it is for the best interests of all concerned that we do so. We therefore say that, under these conditions, the complainant clerks' organization does not represent our clerical and miscellaneous forces within the contemplation of the Transportation Act, as we view it.

4. The methods adopted by the Pennsylvania Railroad and its employes for the determination of wages, working conditions, and other matters of mutual concern, have been successful and are actually working to the satisfaction of both. Abundant evidence is available on that point.

Under these circumstances the intervention of the Labor Board in this case, in effect, becomes subversive of the real purpose of the labor provisions of the Transportation Act, which was to help bring about peaceful relations between the railroads and their employes.

There is peace between the officers and employes on this railroad, and there has been established by mutual agreement a satisfactory means of preventing discord. Practical experience and the records of the years in which the Pennsylvania plan has functioned are sufficient to dispel any reasonable doubt as to the relations existing between the officers and the employes of this company.

5. We conceive it to be not only the right but also the duty of the management to adopt a policy in dealing with its employes which will in its judgment enable it to operate the railroad efficiently and economically, with justice to the employes, even though the Labor

Board in its advisory capacity may not approve the adoption of that policy.

Matters pertaining to the selection of employe representatives with whom to negotiate wages, rules and working conditions go directly to the question of railroad management, and involve an obligation to the public, our stockholders, and our employes which we can not escape.

In making this statement I am distinguishing between interference by the Labor Board with policies relating to railroad management and its right to act as an arbitrator in matters relating to wages and working rules and conditions.

6. Compliance with Decision No. 220 would mean the repudiation of legal and binding contracts with our employes, the breaking down of close and increasingly friendly relations which now prevail to a greater degree than at any time since pre-war days, and the abandonment of a policy which bids fair in time to restore among our employes that sense of duty and loyalty which was of old the pride of both management and men. If we cannot secure the cordial co-operation and assistance of this Board in what we believe to be a fair, just and thoroughly democratic plan in spirit and operation, we are constrained to exercise the privilege accorded us under the law to decline to observe Decision 220 and to preserve and maintain the legal and equitable rights of the railroad company and its employes.

The Chairman: Mr. Rea, you lay a great deal of stress all through the written statement which you have just read on the question of employe representation or on the plan that has been adopted by the Pennsylvania Railroad. Do you understand that this Board in any decision that it has ever rendered affecting either your road or any other road has attempted to

deny employe representation to the carrier and its employes?

Mr. Rea: I understood that in the sense that our plan was created that you did object to it.

The Chairman: That is an entirely different thing, however, from the Board's objecting to it in a general way, don't you think? And as a matter of fact, I will ask you if you know of anything in any decision of the Board that objected to your plan of employe representation, providing you gave all of your employes a right to that representation and a right to a voice in it? Do you know of anything in any of our decisions that does that?

Mr. Rea: No, I do not.

The Chairman: No, as we understand the matter here, Mr. Rea, the thing which you call employe representation on the Pennsylvania Railway is merely the same thing that is guaranteed by the transportation act. That act guarantees employe representation to the employes on all of the carriers in the United States, and I would not have you think that the Board has attempted to deny your carrier or any other carrier in any decision that it has ever rendered the right to have a system of employe representation, because we understand that that is what the transportation act guarantees.

Now, you speak of your willingness to go along with the Board on questions of wages and working rules and conditions, distinguishing that, as I understand you, from matters of discipline and management, and so forth; did I get you clearly on that?

Mr. Rea: Yes, sir.

The Chairman: You also refer to what the Supreme Court has said about those matters. Now I read to you what the Supreme Court said on that very point:

> "The Act is to be literally construed to effect the manifest effort of Congress to compose differences between railroad companies and their employes, and it would not help this effort, to exclude from the lawful consideration of the Labor Board a question which has so often seriously affected the relations between the companies and their employes in the past and is often encountered on the very threshold of controversies between them."

Now, the Supreme Court was referring there to what had been said in the previous paragraph about the question of representation and was distinguishing it from the questions of wages and working conditions and saying there that it is at the very threshold of all these other matters of dispute and is a matter of frequent dispute and of serious import between employer and employes. Did you know that the Supreme Court said that about this matter? Had the counsel of your railroad ever advised you that the Supreme Court had so held?

Mr. Seneff (Counsel for the Railroad): Now, wait a minute, Governor——

The Chairman: Just wait till I complete the question. That this Board did have jurisdiction of the question of representation, had the right to decide a question affecting the matter of who should represent the employes, just the same as it had the right to decide a dispute in regard to wages and working conditions—have you ever been advised by counsel for your railroad that the Supreme Court held that very thing?

Mr. Rea: I have not.

Mr. Seneff: Will you let me answer that question, Governor?

The Chairman: No, I will not, because you are not on the witness stand just now. I am asking your witness. You are at liberty to say anything you wish, Mr. Seneff, after Mr. Rea is through.

Mr. Seneff: Now, Governor, I am going to object to this line of questioning. This proceeding here is under Section 313. Its only object is to enable the Board to determine whether or not Section 220 has been violated. Mr. Rea has frankly told you that it has. Now, I object to any further interrogations along this line, because Mr. Rea does not purport to construe this decision of the Supreme Curt.

The Chairman: Mr. Seneff, begging your pardon for contradicting your last statement, but Mr. Rea had in a way and in a very direct way undertaken to construe the decision of the Supreme Court, because he referred to the decision more than once in his written statement here, and then drew the distinction between the jurisdiction of this Board over matters affecting wages and working conditions and over matters affecting questions of the representation of employes.

Now, I am asking Mr. Rea whether or not he has ever been advised by counsel of his property that the Supreme Court directly held that this Board had the same jurisdiction over the question of representation that it had over matters of wages and working conditions. He says he has not been so advised.

Now, the main purpose in asking Mr. Rea to come here was to explain the letter that he wrote the Board. In that letter he stated that "the clerical and miscellaneous forces on the Pennsylvania Railroad System, whom the Brotherhood of Railway and Steamship Clerks claim the right to represent, adopted the plan of employe representation and elected by secret ballot the employes they desire to represent them in matters pertaining to their rates of pay and working conditions."

Now, it was not clear from that letter whether you meant, Mr. Rea, that subsequent to the rendition of Decision 218——

Mr. Seneff: 220.

The Chairman: Is not this 218, the clerks' case?

Mr. Whiter: The clerks' case is 220.

The Chairman (continuing): —subsequent to the rendering of that decision by the Board that some further steps had been taken on the part of the carrier and this class of employes which disposed of the question which had originally been settled by Decision 220, or did you merely mean to say that prior to the decision you had taken the steps referred to here in this letter?

Mr. Rea: I think since that time.

The Chairman: What steps have been taken since Decision 220 was rendered that affects Decision 220 in any way?

I will explain to you that I ask that question for this reason, and the pertinency of your testimony here is based on this matter: As it frequently happens, after a case has been brought here, either by joint submission or ex parte, that the parties make some sort of an agreement in regard to it, an agreement which virtually disposes of the question which had been submitted to the Board, and it might very well have been inferred from your letter that something had happened subsequent to Decision 220 that had in fact disposed of the question that was involved in that case. Now, I am asking you what, if anything, has happened that disposes of the controversy involved in Decision 220?

Mr. Seneff: Governor, I believe Mr. Whiter or I can answer that question better than Mr. Rea can.

The Chairman: You may have an opportunity later, Mr. Seneff, to say anything you desire to.

Mr. Rea: Well, I do not pretend to answer as to the details of the working of this part of our system. I, as head of the company, and representing the Board of Directors, carry out the policy. General Atterbury, as the head officer in charge of the operations, executes that policy. I do not pretend to follow all the details.

As Mr. Seneff says, either he or Mr. Whiter can answer those questions.

The Chairman: Then you are not prepared to say, I take it, that anything has occurred subsequent to Decision 220 which has disposed of the dispute involved in that case?

Mr. Rea: I cannot answer that question. I don't——

The Chairman: Another statement you made in your written and formal submission was to the effect that your company, as a part of its policy, could not deal with labor organizations, as such. That was the substance of it as I noted it here.

Mr. Rea: That is right.

The Chairman: I want to ask you, as a matter of fact, if your company has not dealt with the four transportation brotherhoods as organizations and if the executives representing those organizations did not sign the agreements with your company as the representatives of the transportation brotherhoods?

Mr. Rea: I do not understand that we have. We confer with our own employes who may represent those organizations.

The Chairman: Did not you in that particular case though make agreements with those four classes of employes, through their organizations and through the officials representing the organizations, and are not those agreements on file with this Labor Board?

Mr. Rea: I could not answer that question.

Mr. Seneff (attorney): Mr. Whiter can answer that.

The Chairman: Do you gentlemen desire to ask Mr. Rea anything further, representing the employes?

Mr. FitzGerald: Mr. Chairman, there are a number of questions that we had intended to ask Mr. Rea, but apparently he is not so well informed on the condition of the property over there. It seems to me like it

would be a waste of time and probably would be embarrassing for Mr. Rea, so I would rather that the statement which we want to make be read into the record after further developments.

The Chairman: Yes. Then if you do not desire to ask Mr. Rea any further questions the Chair will give permission to his associates to make such statements as they desire in regard to any matters that I have asked Mr. Rea about.

Mr. Seneff: I only want to say this, Mr. Chairman, relating to the question of representation: As a matter of fact, I can state that conditions have changed since Decision 220 was rendered, that representatives of our employes in the clerical and miscellaneous forces have been selected by vote. We do not consider that, however, a very material matter.

When the railroads were returned to their owners at the termination of federal control, we adopted what we are pleased to call the plan of employe representation. Our purpose was to give the employes a voice in the management of the property. We have repeatedly said that from the first day of March, 1920, to the present time.

There has not been a single departure from the continuity of our purpose from that hour until this, and we repeat exactly today what we repeated when the shop crafts case was before you two years ago, that we claim the legal right to deal with our employes any time, at any place, anywhere, regardless of the question of majority or minority representation.

The Chairman: Now, Mr. Seneff, pardon me for interrupting you with this question, but I would like to ask you if you understand that this Board has ever attempted in any decision it has rendered in this or any other case to insist that you did not have the legal right to do that.

Mr. Seneff: Why, Governor (Chairman Hooper), if I have a proper conception of the force of your decision in this case, it meant that we had to go back and take a vote among our clerical and miscellaneous forces for the purpose of ascertaining who should represent those miscellaneous forces in negotiating rules and working condition.

The Chairman: You are now assuming, though, Mr. Seneff, that this Board regarded its decision as legally obligatory on the parties?

Mr. Seneff: Yes.

The Chairman: This Board, according to the decision of the Supreme Court here, has certain jurisdiction, and when it exercises that jurisdiction its decision may be what some have been pleased to call merely advisory. The Board has never insisted on anything else.

Now I want to ask you if it is your claim in this case that you have applied Decision 220, or that you have merely exercised what you claim to be your legal right to refuse to apply it?

Mr. Seneff: We have not applied Decision 220 because we do not conceive it to be our legal right or our duty to do so. I will change that. We have not applied Decision 220 because we did not think it was our duty to do so.

The Chairman: Then you are putting yourself or your carrier in exactly the same position that a class of employes put themselves when they strike against a decision of the Board. They merely say: "It is not legally obligatory on us; it is merely advisory and we do not care to accept it." There is not any real difference between the two things, is there, Mr. Seneff?

Mr. Seneff: We think this: that the position the Board has taken of requiring us to submit to our employes a ballot with the labor organization's name on that ballot, for the purpose of having the employes

decide whether they want to be represented by the labor organization or by individual employes, is such an invasion of this company's legal rights that we cannot comply with it.

The Chairman: The Supreme Court did not so hold, did it?

Mr. Seneff: I cannot get anything else out of it, Governor. Now, I want to call your attention for a moment to what the Supreme Court did say in the very first sentence of its decision:

> "It is evident from a review of Title III of the Transportation Act of 1920, that Congress deems it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes and that its plan is to encourage settlement without strikes, first by conference between the parties."

That is exactly what we are doing. It is exactly what we have done.

Again on page 9 of the pamphlet containing the Supreme Court's decision, at the bottom of the page:

> "The purpose of Congress to promote harmonious relations between the managers of railways and their employes"——

The Chairman: Did you say page 9?

Mr. Seneff: Yes, page 9, bottom of page 9.

> "The purpose of Congress to promote harmonious relations between the managers of railways and their employes is seen in every section of this Act, and the importance attached by Congress to conferences between them for this purpose is equally obvious."

We have done all that. We are doing it today. We expect to continue to do it in the future, in the interest of promoting those harmonious relations which Congress says are so essential to have.

The Chairman: Do you think, Mr. Seneff, that it promotes harmonious relations to so construe that provision of the law as to let your conference be one between the carrier and three thousand out of thirty thousand employes, instead of a majority of them?

Mr. Seneff: Why, Governor, there is no question about the harmonious relations between ourselves and our clerical forces; absolutely no question.

The Chairman: Mr. Seneff, have you ever thought that that harmony may be partly induced by the fact that men are dependent on those jobs for a living for themselves and their families, and they are compelled to be harmonious when the railroad simply denies them that representation as it has done?

Mr. Seneff: Governor, there is nobody can ever point to a single word of coercion in this whole arrangement.

Now, I want again to call your attention to what the Court said on page 11 of this same pamphlet:

> "The statute does not require the railway company to recognize or to deal with or confer with labor unions. It does not require employes to deal with their employers through their fellow employes."

Now, that is the position the Supreme Court has taken on the very questions now confronting us.

The Chairman: That is the position this Board took on the matter too, Mr. Seneff.

Mr. Seneff: No, I cannot agree with you there.

The Chairman: Yes. You are putting a rather narrow construction on that Supreme Court's statement. Now, the Board held that the statute did not require the company to deal with a labor union, that is, exclusively. On the other hand, it did not give the employes the right to say that the labor union should be dealt with and that individuals and any other labor

organization should be excluded. But the Board held just what the Supreme Court says there:

"The statute does not require the railway company to recognize or to deal with, or confer with labor unions. It does not require employes to deal with their employes through their fellow employes."

It does not require either one or the other, but it does give to the employes the right of representation and the right to choose between those two things, and then after it is all done, as a matter of course, you may stand on your legal rights, if you desire to, and say that you consider the decision of the Board merely advisory and you decline to accept it. So did the shop crafts in their strike last July 1st.

Mr. Seneff: Now, Governor, let me ask you a question.

The Chairman: All right, sir.

Mr. Seneff: If the railroad company thinks that its legal and constitutional rights are infringed upon by a decision of this Board, do you think it is a duty that the company owes its stockholders, its employes and itself to act upon what it conceives to be its constitutional legal rights and duties, or to follow the decision of this Board?

The Chairman: If the courts had agreed with the company that its position as to its legal and constitutional rights was a correct position, then I should say that the company should adhere to that position. But when a company comes in before this Board, as it did in this case, and gives the Board to understand that it questions its jurisdiction in the case, but if the courts say that it has jurisdiction, that then it would abide by the decision of the court—now that is about what you did.

Mr. Seneff: I beg to differ with you, Governor, I never made that statement. I admitted that the ques-

tion before the Supreme Court was as to the jurisdiction of the Board, and the Supreme Court held against us on the question of jurisdiction, but the Supreme Court did not say that because the Board had jurisdiction over the subject it was the duty of the company to follow a decision which the company might feel infringed upon their legal and constitutional rights.

The Chairman: The Supreme Court, however, did not in this case deal with the legal or constitutional rights of the carrier, but with the jurisdiction of this Board, and held against the contention of the carrier.

Mr. Barton: Mr. Seneff, we have different ways of expressing ourselves in getting at a thing. Now, the Transportation Act provided that in order to settle disputes this Board would be created. They first made it the duty of all of the employes and all of the carriers and all of the agents of each to do everything they could to settle disputes. That was the first idea of Congress. It says it shall be done.

Then, second, they said that as a means to that end, in the first place, the parties shall confer through duly authorized representatives, and have a conference. It was recognized that in dealing with such large numbers of employes they could not deal with each individual, and there had to be certain rules and regulations that would apply with a certain degree of uniformity to a large class. That would not be saying that a road might not have even for one class different rules in different sections. But there had to be a certain degree of uniformity and they had to deal with large numbers. Therefore, Congress authorized the dealing through duly authorized representatives. That is the way this dispute came before the Board.

Now, we are dealing with the clerks class here. They came up here and said that they were the duly authorized representatives and the Pennsylvania said

they were not; that they were not the authorized representatives. The Pennsylvania said they had a plan and a method of selecting employes.

A dispute came before the Board and the Board said neither one of them was wholly right but it wanted to find out; that when a body of men selects delegates it must be done by a majority of those who are directly affected by the vote. Now the Board says in view of the fact that the employes on the one side and the road on the other differ about that, that that is one of the grievances and disputes that has got to be settled. We did not undertake to say that the clerks shall be represented by the Brotherhood of Railway and Steamship Clerks and we did not say they should not. What we said was that that class of employes on the Pennsylvania road, the majority of them, had the right to select their representatives.

Now you differ about the method of selection. We said we would prescribe what we think is fair and send it back to you, that if you select representatives wholly on your line, that is all right; that if you select the general brotherhood, that if they want to select them, they have the right, just as any man would have the right to select a lawyer for a lawsuit in Washington from San Francisco if he wanted to. That was the Board's idea. The Board in that was not endeavoring to defeat the right of representation of the employes, but simply give the employes a voice in it.

That is one of the points I am trying to direct your attention to now and one of the things that is not very clear about Mr. Rea's letter. You remember on the shop crafts' dispute you said that since the decision you had made settlement. That was done with the fair approval of the majority of that class, and we said we would give you a further hearing on that, and later you came in and showed that the majority of the

employes approved, which, if that was true, had dismissed this suit. There was nothing further, then.

Now, I rather gather from Mr. Rea's letter you are claiming that now, but there have not been any facts shown as to how or if the wishes of the employes were fairly exercised or expressed. That is one of the things I thought we wanted to get at in this matter.

Mr. Seneff: Judge, we had not thought that was a very important factor, considering the fact we claimed the right to deal with our employes, either through a majority or minority representation. As a matter of fact, a condition had arisen. We have held elections, secret elections, elections by secret ballot in which representatives were elected, but it was only because we were attempting to carry out the policy which we announced in 1920, that is to say, that we proposed to give our employes a voice in the management. That was the way and that was the method we adopted of giving them a voice in the management.

Now, Judge, I know you and I have discussed this question of representation a good many times and we have not been able to agree at all times, and I suppose we are just as far apart today, much as I regret to say it, as we were when we have heretofore discussed these questions, so I think we are not accomplishing anything by getting into that sort of an argument.

Mr. Barton: I was not intending to argue it, but I thought that that was one of the points that was wanted to be brought out, and I wanted to make it clear what I thought the Supreme Court had decided, which was that we simply had jurisdiction of that question, that the Board had decided in that way, and that if the facts developed that the whole matter had been satisfactorily settled with this class of employes there was nothing further to say.

Mr. Seneff: That is the substance of Mr. Rea's statement.

The Chairman: That is the reason Mr. Rea was called here.

Mr. Seneff: That is the substance of Mr. Rea's statement and his stand on that.

The Chairman: To find out whether the settlement that one might infer from his letter had been made, and had been made in accordance with Decision 220, by permitting the employes to vote according to the Board's decision, a decision which the Supreme Court held that this Board had the right to render. But we see now that it has not been done, and it is not claimed that it has been done.

Now getting back to the question of labor union representation, I want to read you, Mr. Seneff, from page 8 of the Supreme Court's decision.

"But it is said that the Federation is a labor union affiliated with the American Federation of Labor and that the phrase 'organization of employes' used in the Act was not intended by Congress to include labor unions."

Then the Supreme Court said:

"We find nothing in the Act to impose any such limitation if the organization in other respects fulfills the description of the Act. Congress has frequently recognized the legality of labor unions, *United Mine Workers v. Coronado Coal Company* (decided June 5, 1922), and no reason suggests itself why such an association, if its membership is properly inclusive, may not be regarded as among the organizations of employes referred to in this legislation."

Now, don't you understand from that, Mr. Seneff, that the Supreme Court held that the Labor Board

was entirely correct in its decision in requiring that this organization be given a place on the ballot? Is not that what the Supreme Court meant by it?

Mr. Seneff: I have no quarrel with the Board on the matter of jurisdiction.

The Chairman: Is there anything further from this side?

Mr. Seneff: Mr. Whiter will answer the question.

Mr. Whiter. The Governor (Chairman Hooper) asked Mr. Rea if any subsequent action had been taken in connection with the clerks of the Pennsylvania Railroad as to Decision 220. When the Pennsylvania first came here on Decision 220, or prior to Decision 220, we made the statement at that time that we had held an election, which had been arranged for by the company and its clerical forces, and at that election we had the majoriy of clerks voting for the Pennsylvania plan.

The Chairman: Do you mean a majority of the vote that was cast?

Mr. Whiter: Yes.

The Chairman: You don't mean a majority of the clerks?

Mr. Whiter: I am talking about the clerks. Not the shop crafts. I am talking about the clerks.

The Chairman: You mean you made that contention before this Board?

Mr. Whiter: Yes. When the hearing was held here before Decision 220 was rendered. Subsequent to that time we have held elections in all of the regions and if majorities are necessary, we had majorities in all of these elections. We are conducting elections at the present time on the clerical forces in the various regions.

The Chairman: But you are not conducting them in accordance with Decision 220.

Mr. Whiter: We are not conducting them in accordance with Decision 220, no, sir.

The Chairman: Which the Supreme Court said was a decision properly within the jurisdiction of this Board to render.

Mr. Whiter. We are not conducting them in accordance with your decision. I might say we have completed the elections in the eastern region and have a large majority of the clerical employes in favor of the continuation of the plan.

The Chairman: Mr. Whiter, pardon the interruption, but the evidence in that case, speaking of a majority and what is shown as to what your representation really meant, is cited in the decision as follows, and I briefly refer to it, and that evidence was not contradicted before the Board.

"For example: On the Baltimore division, eastern region, 414 votes were cast for the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes. These votes were thrown out, and a committee man declared elected who received 28 votes.

"On the Chicago terminal division, northwestern region, the system board of adjustment of said clerks' organization received 495 votes. These ballots were ignored as void, and committeemen were declared elected who received, respectively, 105, 83 and 76 votes."

Now, as a matter of fact, the election which you held did not permit the name of this organization to be placed on the ballot, and where it was so placed, although an overwhelming majority of the employes voted for such representation, it was ignored and cast out, and minority representation was accepted. That is the fact, is it not?

Mr. Whiter: The fact is that after all the votes

which you refer to there had been cast out, that a majority of the clerks of the Pennsylvania System voted in favor of employe representation. I am not referring to any particular division. I am speaking of the system as a whole. We had a majority of the clerks taken over the entire system, regardless of those that had been rejected as having voted for an organization. We have just completed, as I started to say, an election on the eastern region——

The Chairman: If that is true, Mr. Whiter, why is it you are not willing now to go to a vote with that class of employes and permit them the free and open opportunity of voting for their organization by a ballot?

Mr. Whiter: Because we have taken the position that we will not recognize the right of an organization to have its name appear on our ballot. We are conducting those elections entirely with our own employes.

The Chairman: Then why didn't you take the same position with the transportation brotherhoods?

Mr. Whiter: I want to come to that right now, if you please.

Mr. Chairman: Yes.

Mr. Whiter: The Pennsylvania Railroad twenty years or more ago entered into negotiations with the train service organizations, after having satisfied themselves that their representatives on our railroad represented the men. I am repeating now what has been said before this Board numerous times before. The company satisfied itself that those representatives did represent the men of those classes.

The Chairman. Then why not satisfy yourselves in the same way that this clerks' organization also represents a majority on the road?

Mr. Whiter: And when it came up——

The Chairman: Will you answer that?

Mr. Whiter: Sir?

The Chairman: I say, will you not satisfy yourself in the same way that this clerks' organization also represents a majority of that class of employes?

Mr. Whiter: We have satisfied ourselves to the extent of entering into negotiations with our employes who joined with us in fixing up this plan of employe representation, and found that the majority in selecting their representatives are now representing those various crafts and classes before the officers of the company.

The Chairman: Still in reaching what you claim to be that result, you denied to these men the right to act through their organization, a right which you conceded to the transportation brotherhoods.

Mr. Whiter: If you will let me finish my story, perhaps I can answer your question.

The Chairman: Go ahead.

Mr. Whiter: Up to the time of federal control, we had no organizations as such on the Pennsylvania, except the four train service organizations and a few of the telegraphers. When the railroads were returned, this plan of employe representation was taken up with the representatives of the train service organizations, through their general chairman, who were also employes of the Pennsylvania system, and they entered into the idea, and we negotiated rules and working conditions with them as representing the employes of those various classes, and we negotiated with them directly. There was no general officer of any of those organizations that entered into the making of those regulations. It was all done directly between the management's representatives and the representatives of the employes, although those employes or their chosen representatives were members of the various train service organizations. But our negotiations were direct with our employes, which is all that we have contended for at any time.

The Chairman. Then do you mean that if the clerks' organization would give you the assurance that the rules which they desired to negotiate with the company should be negotiated through employes of the carrier and representatives of their own organization on the road, that you would pursue the same course with them?

Mr. Whiter: If I understand your question correctly, I would answer it in this way: that in the case of the signalmen, the committees elected to represent the employes were 100 per cent. members of the signalmen's organization, and so far as I know are today, but we are negotiating with them and making our regulations with them and dealing with them as employes.

The Chairman: Simply drawing this distinction, that if they will agree to deal with you as individuals you will deal with them, but if they deal with you as officials representing employes' organizations, you will not deal with them?

Mr. Whiter: You have stated it correctly.

The Chairman: But you did deal with the officials of the transportation brotherhoods as such, who signed their names officially to the agreements that they entered into with the carrier, didn't you?

Mr. Whiter: We negotiated with them as individual employes and they signed their names as employes representing those four train service organizations.

The Chairman: Mr. Baileff, go to the Secretary or to Mr. Reed and get a copy of the agreements on the Pennsylvania Railroad covering the transportation brotherhoods.

It is a fact, is it not, Mr. Whiter, that none of these organizations on your road or on any other railroad call in their grand lodge officers to negotiate agreements concerning rules and wages unless you fail to reach an agreement, is it not?

Mr. Whiter: Now, I don't think that I am competent to answer that question, but I have known of instances where it was done, where the grand lodge officers came in and negotiated the rules for their organizations and had taken it out of the hands—I think I am correct—the hands of the individual representatives on that carrier. But I think the general practice, Governor, is for the employes to go as far as they can before the grand lodge officers step in. But it is not universal; it is not done in all cases, or has not been done in all cases in the past.

The Chairman: Is there anything further on the part of the carrier?

Mr. Seneff: It seems we have traveled a good ways outside the record now. We have not anything else.

The Chairman: We are rather liberal here in our method of travel to get the facts out in these cases.

Mr. Seneff: I realize that.

The Chairman: What is there further for the employes?

Mr. FitzGerald: Mr. Chairman, the counsel for the Pennsylvania Railroad has just given expression to the thought I had in mind, that they had gotten quite a long ways out of the record, but we have some few little things to say here that I think will bring us back into the record and so the Board may determine in an intelligent manner just what the real situation on the Pennsylvania Railroad may be.

My relations with the Pennsylvania Railroad officials have not been very great, due to the general situation over there. The statements made by these gentlemen that are here today were made to me by General Atterbury in his office in the Broad Street Station very shortly after federal control. The policy of the Pennsylvania Railroad, as these gentlemen have stated, has never been changed since that time,

and I think the records before this Board will prove that that is true here.

It does not make any difference what the Supreme Court's decision may be, and if I understood the counsel correctly, he said it did not make any difference whether a majority or minority ruled on the Pennsylvania Railroad. Thank God that there are some railroads at least in the country that do not take that position.

But there are some other statements that have been made by these gentlemen here that I think would be illuminating to the Board, and as we have two old time Pennsylvania employes here who have represented this organization since it was formed on that railroad, I think it might be well to have them make a statement in the record.

The first one, I think, that would be of importance, is the question of harmonious relations that these gentlemen spoke about, and I would ask that Mr. Fenstemacher, who is the general chairman on the Pennsylvania Railroad, recite some incidents that I think are quite general on the property.

Mr. Fenstemacher.

STATEMENT OF MR. C. H. FENSTEMACHER

On behalf of the employes.

Mr. Fenstemacher: Mr. Governor and honorable gentlemen of the Board: Before we go into that particular phase of this question, I would like to read for the record a statement supplementary to our previous ex parte statement filed here with the Board, which will prove to you conclusively that the representatives of the employes, of our Brotherhood, have made every effort to get to the management in order to bring about an amicable understanding between the employes and the management in this controversy.

Question: Application of Decision No. 220, Docket 405, of the United States Railroad Labor Board.

In setting forth the facts in this submission relative to the application of Decision No. 220, Docket 405, of the United States Railroad Labor Board, the representative of the employes, members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, desires to call particular attention to the following which we quote from our prior submission now before the Labor Board on this question and to which this statement is a supplement.

Statement of facts: Under date of August 3rd, 1921, the United States Railroad Labor Board in Decision No. 220, Docket 405, set forth their opinion in connection with the controversy between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and the Pennsylvania Railroad Company in a dispute as to the application of Decision No. 119, Dockets 1, 2 and 3, and rendered a decision in accord with the opinion as set forth, the last paragraph of which reads:

"If either party to this dispute shall believe at any time the spirit and intent of this decision is not being complied with, complaint should be filed with the Labor Board in the usual manner."

In compliance with the foregoing, and upon the refusal by the Pennsylvania Railroad Company to comply with Decision No. 220, Docket 405, ex parte submission was filed by the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, with the United States Railroad Labor Board, under date of September 6th, 1921, wherein it was requested that if the carrier, party to

this dispute, denied violation of Decision No. 220, Docket 405, request was made for an oral hearing.

Inasmuch as hearing requested has not been held to date, we, therefore, desire to submit the following as a part of our previous ex parte submission on this vitally important issue.

Under date of July 24th, 1922, and subsequent to the decision of the United States Court of Appeals, which tribunal reversed the decision of the lower Federal Court, in the controversy of the *Pennsylvania Railroad Company v. the United States Railroad Labor Board,* the general chairman of the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, addressed the following letter to Mr. C. S. Krick, General Manager, Eastern Region; Mr. R. E. McCarty, General Manager, Central Region; Mr. T. B. Hamilton, General Manager, Northwestern Region; Mr. I. W. Geer, General Manager, Southwestern Region, and Mr. P. F. Smith, Jr., Works Manager, Altoona Works, of the Pennsylvania System.

"The United States Court of Appeals having reversed the decision of District Judge Page (*Pennsylvania Railroad v. United States Railroad Labor Board*), it is our understanding the following conditions exists as affecting the employes of the Pennsylvania System coming within the jurisdiction of our organization.

"Pending compliance with Decision No. 119, Dockets 1, 2, and 3, and Decision No. 220, Docket 405, the Clerks' National Agreement is in full force and effect on the Pennsylvania System, and, in accordance with said decisions of the United States Railroad Labor Board, it is incumbent upon the proper officers

of the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and the Pennsylvania System, to enter into negotiations preliminary to agreement upon a schedule covering rules and working conditions governing the employes coming within the jurisdiction of said Pennsylvania System Board of Adjustment.

"We, therefore, request that you advise us as to when you will meet our committee in compliance with said Decisions No. 119 and No. 220."

No replies were received to these communications and under date of August 14th, 1922, the general chairman wrote Mr. W. W. Atterbury, Vice President, Pennsylvania System, as follows:

"We respectfully invite your attention to enclosed copies of letters forwarded to all general managers, dated July 21st, 1922, and August 2nd, 1922, respectively. In our letter of July 21st, 1922, we request conference as provided for in Decisions No. 119, Dockets 1, 2 and 3, and No. 220, Docket 405, of the United States Railroad Labor Board, said letter transmitted following the decision of the United States Court of Appeals for the Seventh Circuit, sustaining the Labor Board's issuance of Decision No. 220. In our letter of August 2nd, 1922, which was transmitted as a result of District Judge Dickinson of the District Court of the United States for the Eastern District of Pennsylvania, denying your company's motion for dismissal of our bill in equity directed against your company's continued disregard of Decisions No. 119 and No. 220, and leaving open for further argument our motion for preliminary injunction in our bill in equity directed against the placing in effect by your company the new rates of wages established as a re-

sult of apparent conferences with so called representatives installed in violation of Decisions No. 119 and No. 220, we sought a conference for purpose of agreeing on some temporary arrangement to prevent further legal action pending a decision of the Supreme Court of the United States on the issue you state you have appealed to that Court.

"Not having been granted the conference requested as mentioned above, we are bringing the matter to your attention with the thought you will recognize the justness and reasonableness of our requests, and take the necessary steps to bring about an equitable adjustment of the entire matter.

"We have noted carefully the statement of your attorney, Mr. John Hampton Barnes, in the answer filed to our bill, as follows:

" 'In answer to the twelfth paragraph of plaintiff's bill, defendant, the Pennsylvania Railroad Company, admits it held an election of representatives but not as directed by the Labor Board, it not being bound so to do, as herein elsewhere more specifically averred, and denies that in so doing it disregarded any duty or obligation lawfully upon it, and if, the said defendant avers, in further answer to said paragraph, that a majority of its employes of the classes mentioned in paragraph fourteen of the bill participated in said election and that a majority thereof voted for the representatives with whom the Railroad subsequently negotiated with respect to the rules and regulations applicable to said employes.'

"We have also noted your statement in the 'Pennsylvania Standard' of August 8th, 1922, and elsewhere, to the effect you intend to stand by the agreements, which you claim have already proved to be mutually satisfactory to the vast majority of employes.

"We have also noted propaganda, to the public and to the employes, apparently authorized or sanc-

tioned by you, indicating the Labor Board ordered and we demanded that your Company negotiate agreements with our organization. We respectfully protest against such misleading propaganda, from whatever source, and desire to place ourselves on record as requesting at this time only that the employes be allowed, in accordance with Decision No. 220, to designate what organization, if any, shall represent them, or if the individual representatives shall represent them.

"If as you say, in your answer to our bill in equity and in the Pennsylvania Standard, you are so confident the individual representatives and the Company's plan of representation of which they are apparently a part, have the approval and support of a vast majority of the employes, why hesitate to conduct an election, at our expense, in accordance with Decision No. 220, which election would, if such are the facts, result in re-election of these representatives and the enforcement of the individual employe representation plan?

"We maintain the parties who are in the right in this controversy have nothing to lose by compliance with Decision No. 220. We are ready, willing and anxious to face a test of numerical strength at the suffrage of the employes, our fellow-workers, in accordance with Decision No. 220. Will you likewise allow them to so decide this controversy?

"I can assure you that we desire to be guided by the wishes of those whom we maintain we represent, and wish to co-operate in every way possible to bring about universal recognition of the Pennsylvania as the 'Standard Railroad of the World.'

"In accordance with the Pennsylvania's motto, 'Courtesy,' may we not have a reply to this communication within the week?"

We have no record of having received a reply from Mr. Atterbury, and again, under date of August 16th, 1922, the general chairman sent the following wire to Mr. W. W. Atterbury, Vice-President, Pennsylvania System:

"Please refer to my letter of August 14th and be advised due to controversy resulting from your Company's disregarding Labor Board Decision 220 being prolonged exceeding one year, your Company's refusal to abide by Clerks' national agreement and arbitrary actions your officers toward employes, we cannot influence further consideration by clerical and station forces of Rule 44 Clerks' national agreement, employes complaining to us conditions becoming unbearable. Employes being discharged on flimsy grounds without investigation or hearing with their chosen representatives. Your company having obstructed in every way possible prompt disposition this controversy by Federal Courts, it is imperative we have confer with duly accredited officers Pennsylvania System without delay that we may have at least temporary understanding pending final decision of courts. Please answer immediately this wire and letter 14th."

This telegram, in like manner, was ignored.

Under date of February 20th, 1923, and subsequent to the decision of the United States Supreme Court, in the controversy between the Pennsylvania Railroad Company and the United States Railroad Labor Board, and in compliance with Section 301 of the Transportation Act of 1920, the general chairman of the Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, addressed the following letter to Mr. C. S. Krick, general manager, Eastern Region, Mr. R. E. McCarty,

general manager, Central Region, Mr. T. B. Hamilton, general manager, Northwestern Region, Mr. J. W Geer, general manager, Southwestern Region, and Mr. P. F. Smith, Jr., Works Manager, Altoona Works of the Pennsylvania System:

"Having noted very carefully the decision of the Supreme Court of the United States, October Term 1922, Docket 585, appeal from the United States Circuit Court of Appeals for the Seventh Circuit, the Pennsylvania Railroad Company, appellant, versus the United States Railroad Labor Board, appellees, we are again communicating with you for the purpose of arranging for a conference as provided for in Decision No. 220, Docket 405, of the United States Railroad Labor Board.

"Realizing fully that differences of opinion are, to a certain extent, practically unavoidable, we have given due consideration to the position of the management in that they desired a ruling from the proper tribunal before making any change or changes in existing conditions; in connection with this feature, due note was taken of the article appearing on page one of the 'Pennsylvania Standard' issued May 19th, 1922, from which for ready reference we quote, in part, as follows:

" 'The attitude of the management respecting the court's opinion was stated by Judge C. B. Heiserman, general counsel, in a recent address before the Academy of Political Science, New York, in which he said:

" 'Naturally we are gratified by Judge Page's decision, not because of any pride of opinion sustained, but because it may be known to all men that our company in objecting to the Labor Board's decision was actuated by an earnest and well founded desire to protect its legal rights and those of its employes from what we deemed to be an unwarranted assumption of authority on the part of the Labor Board.

" 'Policy of Company. As in the past, so in the future, the Pennsylvania Railroad will subject itself to the jurisdiction of the Board in strict conformity to the terms of the Act and it will abide by the Board's decisions unless they be of such a character as will necessitate or justify an appeal by the company in an orderly manner to the courts, or to the bar of public opinion. This privilege is enjoyed alike by all carriers and their employes.' "

The Chairman: Read that last sentence again. I was not following it closely when you began it.

Mr. Fenstemacher: " 'As in the past, so in the future, the Pennsylvania Railroad will subject itself to the jurisdiction of the Board in strict conformity to the terms of the Act and it will abide by the Board's decisions unless they be of such a character as will necessitate or justify an appeal by the company in an orderly manner to the courts, or to the bar of public opinion. This privilege is enjoyed alike by all carriers and their employes. I desire also to say that no feeling of hostility, personal or official, have been engendered between the Labor Board and our company and that a fine spirit of co-operation has been displayed by the Board in the taking of steps to secure a judicial and authoritative determination of the legal questions which have been the subject of argument and consideration.' "

We have noted, and respectfully direct your attention to the statements of the Supreme Court of the United States that the law does vest the Labor Board with power to decide how representatives of the employes shall be chosen and referring to the contention of the management that the question of who may represent its employes is not within the jurisdiction of the Labor Board to decide and that the jurisdiction of the Board does not begin until after conferences are held

with representatives of the employes, the Supreme Court stated that such a construction would give either side an easy opportunity to defeat the operation of the Act and prevent the Labor Board from deciding any dispute.

After viewing the matter from all angles we are hopeful and confident that the issue having been decided by the highest tribunal in the land, all parties concerned will recognize the moral obligation to be guided by the opinion of said tribunal, and we are hopeful and confident the management will accept the decision of the Supreme Court in the same spirit the employes would have been obliged to accept a decision of opposite nature. We ask, therefore, that you arrange for a conference with our committee at the earliest possible date, said conference to consider the method of conducting an election in accordance with the provisions of Decision No. 220, Docket 405, of the United States Railroad Labor Board. Kindly give such advance notice of arrangements for conference as to enable our committee to make necessary arrangements to attend.

In view of the fact that this proposition has, in some cases, been handled as a Regional proposition, and in others as a System proposition, we are, in order to avoid complications, addressing this letter to you and sending a carbon copy to Mr. W. W. Atterbury, Vice-President in charge of Operations.

Thanking you for prompt attention and an early reply."

These communications, like all others, have been ignored by the Pennsylvania management, and again, under date of April 14th, 1923, we addressed Mr. W. W. Atterbury, Vice-President, Pennsylvania System, in the following manner:

"Kindly refer to communication addressed to you under date of February 20th, 1923, by the general

chairman, Pennsylvania System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, relative to compliance by the Pennsylvania Railroad Company with Decision No. 220 of the United States Railroad Labor Board, wherein the method of procedure was set forth by that body as to the election of representatives of the employes.

"Inasmuch as copies of the general chairman's letters addressed to the general managers of the various regions have been heretofore mailed to you, I am also enclosing copy of our letter addressed to Mr. C. S. Krick, General Manager, Eastern Region, Philadelphia, Pennsylvania, of which a like copy also has been forwarded to the following:

"Mr. W. W. Clement, General Manager, Central Region.

"Mr. W. B. Wood, General Manager, Northwestern Region.

"Mr. J. W. Geer, General Manager, Southwestern Region.

"Mr. P. F. Smith, Jr., Works Manager, Altoona Works.

"I most respectfully request that you give this matter your careful consideration, advising the undersigned at an early date when the Committee representing the Pennsylvania management will meet with the officers of the Pennsylvania System Board of Adjustment in compliance with said Decision No. 220, Docket 405, of the United States Railroad Labor Board."

Also under date of April 14th, 1923, we addressed Mr. C. S. Krick, General Manager, Pennsylvania System, Eastern Region, Philadelphia, Pennsylvania, as follows:

"Under date of February 20th, 1923, and subsequent to the issuance of Decision No. 585, October

Term 1922 of the United States Supreme Court, rendered February 19th, 1923, former General Chairman Mr. D. L. Miller of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, addressed you relative to compliance by the Pennsylvania Railroad management with Decision No. 220 of the United States Railroad Labor Board, wherein the method of procedure was set forth by that body as to the election of representatives of the employes.

"I have no record of any reply having been made by you to Mr. Miller's communication and am, therefore, addressing you with the request that you kindly refer to his letter of February 20th, 1923, advising me when the committee of the management will meet with the committee of the System Board of Adjustment of the Pennsylvania System as outlined in said Decision No. 220.

"This letter is addressed to you in view of the fact that our committee has been dealing with you in the past on this matter, with the understanding you are acting for the Pennsylvania System, I am, however, forwarding copies of this letter to Mr. W. W. Atterbury, Vice-President in charge of Operations, General Managers M. W. Clement, W. B. Wood, J. W. Geer and Works Manager P. F. Smith, Jr., who will understand this communication to be a direct appeal to them if my understanding is incorrect that you are acting for the entire System.

"An early reply will be much appreciated."

We have no record of having received a reply to either of these communications.

To date there has been no election held on the Pennsylvania System to determine, by the choice of a majority of the employes, who shall be the representa-

tive of the employes as provided for in Decision No. 220, Docket 405, United States Railroad Labor Board.

Employes' contention: The employes contend that in rendering Decision No. 220, Docket 405, the United States Railroad Labor Board was entirely within its rights in prescribing the method of procedure to be followed in electing employe representatives. It is contended that the Board's ruling is both mandatory and binding upon both parties concerned and that the non-application of the spirit and intent of Decision No. 220, Docket 405, by the Pennsylvania Railroad Company is a violation of the law.

The employes further contend that the decision of the United States Supreme Court, by its interpretation of the law, has definitely established the jurisdictional right of the United States Railroad Labor Board in deciding this dispute between the railroad and its employes, and that the autocratic defiance of the Pennsylvania Railroad management in refusing to abide by and be governed by Decision No. 220, Docket 405, is a flaunting violation of the laws of the United States Government and the continued practice of coercion and intimidation used by the railroad to compel the employes to accept a plan that has been declared illegal, null and void is not only an abridgement of the constitutional rights of the employes, but decidedly un-American.

Section 313 under Title 3 of the Transportation Act of 1920 specifically states that the Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employe, or subordinate official, or organization thereof, may, upon its own motion, after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Acting upon our original request filed with the Board in September, 1921, and upon our further request of April 28th, 1923, which formal requests we ask the Board at this time to make part of the record in the case, the Labor Board in accordance with Section 313 of the Transportation of 1920 did by its letter of April 28th, 1923, addressed jointly to Mr Samuel Rea, President of the Pennsylvania Railroad, and Mr. E. H. FitzGerald, Grand President of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, cite the carrier and our organization to appear here to-day that they, the Board, may make necessary inquiry thus enabling it to determine whether a violation of Labor Board Decision No. 220, Docket 405, has occurred.

Mr. Governor, as the representative of the employes before you to-day, good, law-abiding American citizens, who are subservient and obedient to the laws of the United States Government and who feel that they are obliged to be subservient and obedient to the decisions of your Board, a tribunal set up by a specific act of Congress, it is our contention that the Labor Board does have jurisdiction and has the right to designate how the representatives of the employes shall be chosen, and I quote from the decision of the United States Supreme Court in support of this contention, where the Supreme Court states:

"We think it does vest the Labor Board with power to decide how such representatives ought to be chosen, with a view of securing a satisfactory co-operation between the management and the employes."

It has been stated here to-day by a representative of the Pennsylvania management that their elections have been held and that the employes selected were elected by a majority. I want to give to you as an exhibit in this case one point particularly.

In a recent move announced by the Pennsylvania management of their general office forces from the City of Pittsburgh to the City of Philadelphia and at the same time to show you that the Pennsylvania management has not stated the facts as they really are before your Honorable Board, when it says that there has been no attempt at coercion or intimidation, I hand you an exhibit, a part of which reads:

"Acceptance of the agreement made with the working forces in the accounting department at Philadelphia will be necessary on the part of those who are in the classified service of the accounting department at Pittsburgh and accept transfer to Philadelphia, with the understanding that their present rate of pay will be continued so long as their services are satisfactory, and if the pay is lower than the existing classification, it will be advanced to the existing classification figure."

The exhibit in full reads as follows:

"Pennsylvania Railroad System. Accounting Department.

"In accordance with the necessity for gradual removal of the General Office Accounting Forces in Pittsburgh to Philadelphia which has been deferred as long as possible, and to give suitable notice to all concerned, it is essential to make this agreement cancelling the agreement dated August 1, 1921, between the elected representatives of the clerks of the accounting department at Pittsburgh, Pennsylvania, and J. W. Orr, comptroller, representing the management, covering rules, regulations and classifications of salaries, effective August 1, 1921, also supplements thereto dated September 27, 1922, and October 31, 1922, relating to modification, additions, etc., to the agreement dated August 1, 1921:

"1st: The Company proposes to gradually remove the general office accounting forces now located in

Pittsburgh, Pennsylvania, to the general office at Philadelphia, Pennsylvania, beginning about July 1, 1923, or before that date if possible.

"2nd: The opportunity is offered all present employes of the accounting department at Pittsburgh to accept transfer to Philadelphia under the following arrangements and conditions:

"A. That their present rate of pay will be continued.

"B. Acceptance of the agreement made with the working forces in the accounting department at Philadelphia will be necessary on the part of those who are in the classified service of the accounting department at Pittsburgh and accept transfer to Philadelphia, with the understanding that their present rate of pay will be continued so long as their services are satisfactory, and if the pay is lower than the existing classification, it will be advanced to the existing classification figure, and if higher, will be maintained at that figure until the classification operation makes a change.

"C. The company will assume the expense of transferring by freight of the household effects of employes, not including automobiles, horses and carriages, etc.

"D. To further promote the comfort and convenience of those who remove to Philadelphia, a reasonable part of crating and packing charges will be assumed and paid by the company, or if the entire expense is regarded by the comptroller as reasonable, all of such expense will be paid by the company.

"E. Pending the final transfer of the working forces, the company is willing to grant reasonable requests for free transportation between Pittsburgh and Philadelphia.

"F. In order to provide for the convenience and comfort of the forces and their families in moving to Philadelphia, arrangements will be made to have an

attache of the Real Estate Department at a convenient place in Philadelphia to consult with and advise those desiring to purchase or rent houses in or near Philadelphia. In addition to the comptroller and his representative will offer their best aid and advice in this matter.

"Accepted for the management Pennsylvania Railroad System, (signed) J. W. Orr, Comptroller.

"Witnessed: (signed) John Hurst.

"Accepted for the clerical forces of the accounting department at Pittsburgh, Pennsylvania: (signed) J. W. Hutchinson, W. E. Slasor, Harry L. E. John, R. C. Buerkle, elected representatives of the majority of accounting department clerks at Pittsburgh, Pennsylvania

"Pittsburgh, Pennsylvania, May 11, 1923.

"Office of Auditor of Through Freight Traffic, Pittsburgh, Pennsylvania, May 12, 1923.

"I have read the attached agreement signed by the elected representatives of the clerks of the Accounting Department at Pittsburgh, dated May 11, 1923, and agree to move to Philadelphia.

"_____."

Going still further, as you see, it makes it mandatory upon the employes who are being transferred to Philadelphia to accept the company's plan of employe representation, for which they had to sign on the dotted line, so stating that they would accept it, in order to have employment. This document, as you see, is signed approved for the management by J. W. Orr, comptroller; accepted for the clerical forces of the Accounting Department at Pittsburgh and signed to J. W. Hutchinson, W. E. Slasor, Harry L. E. John, R. C. Buerkle, elected representatives of the majority of Accounting Department clerks at Pittsburgh.

In the face of that statement I give you a record

that was compiled by the tellers at the election wherein there was a total of 660 votes cast, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes of the Pennsylvania System Board of Adjustment receiving 512 of the 660, and these men who sign as having been elected by a majority vote receiving 45, 46 and 44 votes respectively.

The record referred to is contained in the following, dated June 17, 1921:

"Mr. J. W. Orr, Comptroller. Dear Sir:

"The tellers appointed to conduct the election have performed that duty and give you below the result of the election:

"Penn. System, Board of Adjustment, Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes, 512.

"Chas. W. Boutt 44.
"W. H. Dalzell, 45.
"H. L. E. John, 46.
"H. E. Gardiner, 21
"C. R. Briceland, 25.
"B. F. O'Connor, 36.
"G. E. Dorrington, 15.
"J. J. Dermit, 1.
"Carl D. Noach, 1.
"W. F. Warren, 2.
"Wm. Hunter, 1.
"Wm. Sandoe, 2.
"J. E. Bridges, 2.
"P. E. Weaver, 3.
"Fred Aiken, 2.
"J. E Doran, 1.
"Frank Walter, 2.
"T. Weaver, 2.
"G. W. Anderson, 4.
"Wm. Davis, 3.

"A. W. Walker, 29.
"J. F. Vance, 1.
"F. W. Neville, 4.
"W. Y. Hutchinson, 1.
"W. I. Genway, 6.
"S. N. Welsh, 1.
"Mrs. C. E. Nauger, 23.
"F. M. Torry, 1.
"J. G. Clayton, 2.
"Elsa Scott, 1.
"J. G. Bankert, 6.
"Mr. McClintock, 1.
"Miss Pauline Kennedy, 1.
"J. S. Carver, 1.
"Mr. Stevens, 5.
"D. Houston, 2.
"W. H. Walker, 1.
"Samuel Harper, 1.
"F. H. Stevenson, 3.
"W. H. Reeder, 1.
"Harry Reiser, 1.
"G. H. Fortenbacher, 1.
"John R. Hall, 2.
"John White, 1.
"George Jones, 1.
"Fred Snyder, 1.
"Francis O'Connor, 3.
"J. E. Marion, 1.
"G. H. Pascheldt, 3.
"A. G. Elliott, 1.
"W. T. Roth, 1.
"D. E. Lester, 4.
"A. D. Vandling, 1.
"W. W. Hamilton, 1.
"H. M. Buchanan, 2.
"F. S. Straub, 1.
"James Aitken, 1.

"H. C. Sturm, 1.
"Mr. Conners, 1
"Mr. Johnson, 1.
"Mr. Walker, 2.
"E. Bankert, 1.
"T. C. O'Connors, 1.
"E. W. Bankert, 1.
"Mr. Brycling, 1.
"C. F. Alloways, 5.
"Blank Ballots, 11.

"Total number of votes cast 660, of which 11 were blank.

"We hereby certify that the count of ballots as shown by this tally sheet is correct.

".....,
".....,
".....,
Tellers."

It has also been stated that there has been no attempt at coercion or intimidation on the part of the management with regard to the employes, but I have several exhibits here that I want to file in their order, Mr. Governor. The first one is an affidavit, sworn to, which I will file as exhibit 1.

"State of New Jersey, County of Essex, ss.

"William F. Murphy, of full age, having been duly sworn according to law, makes deposition as hereinafter set forth.

"I am employed as a clerk by the Pennsylvania System, at Waverly Transfer, Newark, New Jersey.

"On July 15th, 1922, at about 1:30 P. M., I visited office of J. L. Webb, supervising agent of the New York division of said Pennsylvania System, located in Jer-

sey City, New Jersey. I was met by Daniel O'Leary, chief clerk to said J. L. Webb. The purpose of my visit was to inquire of said J. L. Webb if I could be considered for the position of agent at Croydon, Pennsylvania. Said O'Leary introduced me to said Webb and explained reason for my visit as afore stated.

"Said J. L. Webb stated to me, 'You missed your opportunity four or five days ago,' turning to said O'Leary, said Webb inquired, 'Didn't he, Mr. O'Leary?'

"O'Leary declared, 'Yes.'

"Said J. L. Webb further stated, 'When we 'phoned to Waverly Transfer for men to help the company out in the strike crisis—' " I want to refer to this, Mr. Governor, because it was at the time the shopmen's strike took place, when the Pennsylvania management was attempting to get the employes to leave their regularly classified positions and accept positions as strike breakers.

"Said J. L. Webb further stated, 'When we 'phoned to Waverly Transfer for men to help the Company out in the strike crisis, you men out there failed to show that you were company men. I do not understand the men at Waverly Transfer, as they do not seem to work in harmony with the company.' "

This in face of the fact that the statement has been made here that everything is going on harmoniously.

" 'I believe they are a socialistic gang.'

"The undersigned replied, 'No, Mr. Webb, they are far from it.'

"Said J. L. Webb then stated, 'Maybe I shouldn't have said that; I beg your pardon. All of you men—chief clerk and heads of departments, refused to volunteer. Murphy go out there and break up that gang. While I am supervising agent, the men that helped me

in the strike crisis will be taken care of by me, but the men at Waverly Transfer have got to come down and tell me that they are company men and sincere; otherwise I will not do anything for them. I just appointed a man at Middlebush that I know did not have the ability of some other employes, but I know that he was a company man and could be called on at any time, therefore, I gave him the appointment. If you had volunteered when we 'phoned to Waverly Transfer, you would be on record as helping the company out, and your record would show that you were worthy of something better if the opportunity arrived.'

"When the undersigned was leaving office, said J. L. Webb shook hands with me and said, 'Good luck to you, but make an effort to break up that gang.'

"(Signed) William F. Murphy.

"Sworn to and subscribed before me at Newark, New Jersey, this 31st day of July, A. D. 1922. (Signed) William C. Scott, Notary Public of New Jersey. My Commission expires May 7, 1924."

Another one, which is quite lengthy, is, you will bear with me, I would like to read it. The preamble to the facts that I would like to bring out lead up to the conclusion.

"In the performance of my work one morning, sometime in July, 1922, Mr. Mike Gentile called my attention to a certain car door, Pennsylvania Railroad—to be exact No. 98 car, No. 10 track—at the Richmond, Indiana, Transfer Station, informing me that he could not get it open. I made the remark to him, 'Take a bar and force it open.' He replied, 'I've tried that.' Not being a foreman and having no jurisdiction over their work, I told him to get some of the other workmen to help him. I proceeded on with my work and did not give it another thought until one of the employes informed me that Mr. Gentile was repairing car doors.

wered back, 'Will see about it,' and kept on with ork.

During the lunch hour some three or four other oyes called my attention to the occurrence. Di- after dinner it was my duty to go to each tally- and get his tonnage sheet which contained the names who are working, also the car numbers are worked and the tonnage each car contained.

'In making my round I came across Mr. Gentile e asked me to go and see the car, named hereto- and it seemed from his talk that someone had something to him about this door. To be sure— as I had a little time as I was on duty before work —I went with Mr. Gentile to the car, he showing hat he had done. In order to get the door open he taken one of the hangers off and in opening the replaced the hanger. I informed Mr. Gentile that as within his rights in so doing and no one should any comment upon his work.

"I then continued my work getting up the tonnage and came in contact with Mr. J. C. McKinley, man for the Pennsylvania Railroad and division man of our organization and informed him that Mr. Gentile had done was all O. K., also Mr. s Salzorulo, tallyman for the Pennsylvania Rail- and member of the Protective Committee of our nization, informing him also what had occurred.

"The matter was dropped at this time and I had r again given it a thought until the morning of ember 9th, 1922, when I was called from my work Mr. George W. Guier, Assistant Foreman, before J. E. Kirkpatrick, supervising agent, Mr. C. D. er, freight agent, Mr. Cecil Graffis, Assistant Clerk he Freight Agent, all of the Richmond Division, nsylvania Railroad.

"At this meeting Mr. Kirkpatrick informed me I been called to answer some charges which had

been preferred against me, and proceeded to read the same. I cannot remember the exact wording, but, as near as I remember, something like this:

"On a certain morning in July, 1922—don't remember the date—Stevedore on Track No. 10 informed the platform foreman I had interfered with his work by telling him that he should not have opened and repaired a car door which stood at No. 98 spot, and that he was hurting the organization by such action, and if any freight came to the car to pile it on the platform. Mr. Kirkpatrick asked me if this was true, and I answered, 'I will make an affidavit that it is not.' I had forgotten this occurrence until it was called to my attention again, and it began to come back to me part at a time, and I stated to this body as near as I could remember, as I heretofore stated, as asked Mr. Kirkpatrick if he would produce the employe who made this untruthful charge. He answering, 'Well, I was in hopes we could get along without that, but as you have asked for it, will have the witness sent for,' and, turning to Mr. Guier, commanded him to bring the witness, Mr. Mike Gentile.

"Mr. Kirkpatrick asked Mr. Gentile to state his duties and, among them, he said car repairing. I took no exceptions to that, but knew it was not true.

"Mr. Kirkpatrick then asked him what was as near as he could remember what Martin said to him about this car door. Mr. Gentile again began to go over the duties he performed and was stopped in the midst of it by Mr. Kirkpatrick, who informed Mr. Gentile he already had that, but to tell what words took place that morning between himself and Mr. Martin.

"Mr. Gentile went off again in a mixture of American and Italian, which no one could understand, and was again and again halted by Mr. Kirkpatrick. At last Mr. Gentile asked for an interpreter, Mr. Louis Salzorulo, and was informed by Mr. Kirkpatrick he

could not have him but must tell in his own way what words were said between him and Martin, which Mr. Kirkpatrick could not get him to do.

"Mr. Kirkpatrick becoming impatient, read the charges over and asked Mr. Gentile if that was what he signed, he answering, 'I don't know.' Then Mr. Kirkpatrick read it over, one sentence at a time, and Mr. Gentile answered in the affirmative at all times, but showing in his answers and actions he still did not understand what was read to him.

"These charges were all written out by Mr. Guier, as they were shown to me, but not to read. Then there was a copy typewritten and signed by Mr. Gentile and witnessed by Mr. George W. Guier.

"I asked Mr. Kirkpatrick if I might ask Mr. Gentile a few questions, and the privilege was granted. I asked Mr. Gentile if he did not remember just as I have heretofore stated, and he would not make any answer.

"Mr. Kirkpatrick then asked what I had to say and I answered, 'The charges are absolutely untruthful.'

"I also asked for a copy of the questions and answers, which I did not get. I was then told to return to my work.

"On the morning of September 11th, 1922, I was informed by Mr. Cecil Graffis to report at once to Mr. Kirkpatrick's office and was met by him. He stated to me that it was in the same case and asked if I wanted any changes made in my answers to his questions. I again asked him if I could have a copy of the questions and answers, and he said he had no objections if the superintendent didn't; and when we got over to his office, for me to ask him.

"I then asked him to let me read the questions and answers. He did not refuse, but proceeded to read them himself. No question or answer was read to me

on which, on the spur of the moment, I objected to, but I objected because of all the questions were not recorded, as asked Mr. Gentile, and was informed, 'Oh, they were all preliminary questions that don't amount to anything.' Yes, they did amount to something as, to my mind, it would show how uneducated this Mr. Gentile is and how easily influenced.

"Mr. Kirkpatrick then informed me that he had interceded in every way in my behalf, but he was very uneasy as to the outcome, if I did not show the superintendent I was ready to go along with him.

"I was not informed what was the meaning of 'go along with him,' but had a pretty good idea, accept the Company's rules and regulations. Mr. Kirkpatrick then asked me to make a statement as to my service with the Company, which I did and received a copy of it. I was then taken to the office of Mr. W. C. Higginbottom, superintendent, Richmond Division, and introduced, and was told to sit down. The superintendent then informed me he wished to interview me on a certain charge and asked me if I had anything to say, and I informed him I had not. Then he asked me, 'Don't you know what you're up here for?' Having been informed over in Mr. Kirkpatrick's office that it was on the same charges preferred against me on September 9th, 1922, I informed the superintendent, 'I suppose that was the reason.'

"He then again asked me what I had to say, and I answered, 'I absolutely deny the charges.'

"Superintendent: 'Then you deny interfering with the work on the platform?'

"Answer: 'Yes, sir, I do.'

"Superintendent: 'Then you deny instructing Mr. Test to report to you any irregularities that occur on the platform?'

"Answer: 'Before I answer that question I must

know what you mean by "irregularities."' The superintendent made no answer, but came back with, 'Did you know Mr. Test was called into Mr. Slifer's office and questioned?'

"Answer: 'I did, sir.'

"Superintendent: 'Where was this reported to you?'

"Answer: 'At my home, out in front of the house.'

"Superintendent: 'You informed Mr. Test not to have any fear, you would take care of him, did you not?'

"Answer: 'I informed Mr. Test, as long as he was doing his work right, and attending strictly to duty, that the organization would back him to the limit.'

"Superintendent: 'Did you ever give Mr. Test any instructions while on duty?'

"Answer: 'To the best of my knowledge, I never directly or voluntarily interfered with Mr. Test while on duty, but while taking the numbers and initials of the cars on his tracks, he had, at various times, asked me questions. Some I answered and some I could not. As to what the questions were, I don't remember.'

"Superintendent: 'Do any of the employes of the freight station come to your home and ask you for advice and information?'

"Answer: 'Yes, sir.'

"Superintendent: 'Do you ask them any questions?'

"Answer: 'Yes, sir.'

"Superintendent: 'If I should come to your home and ask you for information and advice, would you ask me questions?'

"Answer: 'I would.'

"This answer seemed to peeve him, as he came back slamming his fists on the desk, 'Do you mean to tell me that you would question me as superintendent of the Richmond Division?' Thinking I had misunderstood

him, I asked him to please state the question again, which he did, and I answered, 'As a free born American citizen, I held the right to do anything in my own house which does not violate the laws of our land.' He came back in this way, 'I want you to understand you have no right to question or counsel any employe on the Richmond Division, Pennsylvania Railroad Company, at any time, or at any place,' and asked me the question, 'By what right do you have for these employes to seek your information and advice?'

"Answer: 'I was elected by them as their local chairman, which position I now hold, of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.'

"Superintendent: 'Then you admit there is a fight on the Pennsylvania Railroad?'

"Not understanding what he really meant, I asked him just what he really meant, and he came back, 'You then admit there is a fight on between the Pennsylvania Railroad Company and the Brotherhood of Railway Clerks—oh, well, whatever the name of your organization is?'

"Answer: 'There is a misunderstanding.'

"Superintendent: 'I will give you to understand I will not have a man on the Richmond Division who is fighting the Pennsylvania Railroad Company, and you are discharged now.'

"Answer: 'Well, if that is the way you feel about it, I can't help it.'

"Superintendent: 'Don't you like to work for the Pennsylvania Railroad Company?'

"Answer: 'Yes, sir.'

"Superintendent: 'Then why are you fighting it?'

"Answer: 'I am not fighting it, only trying to make our working conditions and wages better and protecting the members of our organization who are unjustly treated.'

"Superintendent: 'Then why don't you join the company's organization?'

"Answer: 'Because I could not get anywhere if I had a grievance. Everything is left to the management, they are the sole judge.'

"This seemed to peeve him again, as he went up in the air and slammed his fists on the table. He said, 'You are discharged—I will not have a man on my division who will not go along with the company's plans. You had better leave the employ of the company and go and secure some employment at some other outside industry. But, if you will give up your organization and go along with the company's rules and regulations, we will forget all about these things and you can go on back to work.'

"I answered him with this statement: 'I am a free born American citizen and I believe I am right and I will stay with it until something convinces me it is wrong. My father fought four long years to free the black men, and I am willing to fight any number of years to free the laboring man.'

"At this point Mr. Higginbottom discharged me, and I departed in peace.

"When this took place in the superintendent's office, only three persons were present, Mr. Higginbottom, Mr. Kirkpatrick and myself. No notes were taken by either party, and this is written out from the best of my memory. Other questions may have been asked and answered, but I have forgotten them, only trying to remember the main ones.

"(Signed) L. C. Martin.

"State of Indiana, Wayne County, ss. Subscribed and sworn to before this 21st day of September, 1922. (Signed) Frank Straye, Notary Public.

"My commission expires January 31, 1923."

This next one will be Exhibit No. 3, that I wish to file for the record and which I would like to read:

"Richmond, Indiana, September 16, 1922.

"To whom it may concern:

"This is to certify that I am an employe of the Pennsylvania Railroad, employed on the Richmond Division at the Richmond Freight House. My work is that of a tallyman, and that I am a duly accredited representative of the employes on said division, being elected by the members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, as their division chairman.

"Monday, September 11th, 1922, at about 10 o'clock, I was told by Assistant Foreman that I was wanted in the supervising agent's office. On entering, I was instructed that the superintendent wanted to see me, and so I, with Mr. J. E. Kirkpatrick, supervising agent, went over to the superintendent's office. I was introduced to the superintendent, Mr. W. C. Higginbottom, and was told to be seated. Mr. Higginbottom opened the meeting by saying he had discharged Martin, and I replied, 'So he told me.' He then said that he had discharged him because he was interfering with the work on the platform and said that he would not have any employe that was fighting the Pennsylvania.

"He then said that he had called me up to warn me that I would have to go along with the company's plan and their committee. He said that he did not have anything against me, charges or anything, but they did have a charge against Martin. He said that there was a charge against me, the Curen case, but that that was all cleared up now. I told him that I could explain that case, but he said that it wasn't necessary as it was all cleared up, but what he wanted was to tell me that I would have to go along with their committee and he wanted to know why it was that I wouldn't be a Pennsylvania man. I asked him if my work had been

satisfactory, and he replied, 'Oh, yes, you were a little low on your tonnage last month, which was far from being satisfactory, and you will have to make a better showing from now on.' I said that I had worked a number of furniture cars and to this he said, 'That might be all right for a day, but he didn't believe it would hold good for a month.' I told him that it would as long as his assistant foreman gave all the good cars to two or three other tallymen and he then told Mr. Kirkpatrick to look into it and if the clip box was not being run right, to see that it was.

"He then said that that was not what he called me there for, that he could and would forgive and forget any mistakes a man might make, but that he would not tolerate any employe on his division who would not go along with the company's plan of representation.

"The following is a brief of the conversation which took place after this:

"Superintendent: 'Now I understand that you are associated with Martin in your organization, and I just want to tell you that I will not have you interfering with the work down there, and I want you to understand that I am the superintendent and I will give all instructions that are necessary, and if you can't go along with us we will have to discharge you and will not hesitate to do so, because there is too much trouble on our platform.'

"McKinley: 'To my knowledge I have not been interfering with any employe but I had always instructed the men at our meetings to give their employer a good eight hours' work.'

"Here he jumped up and demanded to know what right I had to instruct his men and I told him that I was duly elected by the members of the Brotherhood as their division chairman, and he said that he didn't care anything about our organization and for me to leave his men alone.

"Superintendent: 'I will give you to understand that you have no right to instruct my men anywhere, on the street or in your home or in your lodge room. I want you to understand that you are my employe and I have jurisdiction over you wherever you are, whether you are on duty or off. Now I want to know what you are going to do, are you going along with our Committee.'

"McKinley: 'You will have to show me some merit to your company agreement before I can go along with it. You have changed it about twelve times since you put it into effect.'

"Here I cited my own case:

"I was a delivery clerk and in the reduction of forces last January I was told I was not a clerk but a delivery-man, and that I could not bump the ballot clerk but would have to go back to trucking, which I did, but was afterwards promoted to that of tallyman.

"The first of the year you said that I wasn't a clerk, and you say that I'm not a clerk now, but when you gave the reduction in pay you gave me the clerks' reduction.

"At one time you say that I am not a clerk, and then you say that I am a clerk, now I want to know when you are right. I say, if you want me to go along with your company plan, you will have to show me some merits of it.

"Superintendent: 'If you have any grievances you bring them up through our committee and I will handle them or I will meet you informally.'

"McKinley: 'We have sent you several grievances through our committee and you have returned all of them unopened. I cannot understand why you do it when the general superintendent and the general managers all accept our grievances.'

"Superintendent: 'The other superintendents might handle them, but I will not.'

"McKinley: 'If I have any grievances in the future, I will handle them as I have through our organization.'

"Superintendent: 'All right, if you don't get any action on them it will be your own fault. Now that is about all I have to say to you. I want you to go back to work and see if you can't go along like Pennsylvania employes should. I want you to understand that I am going to clean out that freight house.'

"McKinley: 'You have discharged one of your best men.'

"Superintendent: 'I would discharge the best man I have, even Charles Slifer, his agent, if he wouldn't go along with the company's plan of representation.'

"McKinley: 'You discharged the wrong man if you wanted to get out the trouble-makers, as there are two or three men down there who are causing more trouble than anyone else.'

"Superintendent: 'Who are they, and why haven't you reported these things?'

"McKinley: 'Your assistant foreman knew all about them but would not pay any attention to them. There is one man that will stop a truckman and talk with him for fifteen or twenty minutes at a time. Now, why don't you get after that fellow?'

"Superintendent: 'What do they talk about?'

"McKinley: 'I don't know, as I never stopped to listen.'

"Superintendent: 'Well, it takes two to have a conversation.'

"Here I told him that this man would stand around and listen to what all the men said and then run into the office and make a report and add about fourteen yards to it. And that this man is the one that started the report about Mr. Martin and myself, objecting to the hiring of colored men on the platform, which was untrue as we did not care who they hired, and that we

had several colored men who were good workers. He, the superintendent, said that this was the first he had heard of it.

"After we had a general talk about conditions on the platform, I was told that he was through with me and that all they wanted was to warn me that I would have to go along with the committee and that if it was going to be a fight to a finish, that he had his coat off.

"(Signed) J. C. McKinley.

"State of Indiana, Wayne County, ss. Subscribed and sworn to before this 21st day of September, 1922. (Signed) Frank Straye, Notary Public. My Commission expires January 31st, 1923."

Exhibit No. 4, which I desire to place before you, is an affidavit sworn to before a notary public, reading:

"State of Pennsylvania, County of Dauphin, ss.

"Personally appeared before me, George D. Herbert, an alderman in and for the County of Dauphin, State of Pennsylvania, William H. Romig of Harrisburg, Dauphin County, Pennsylvania, who being duly sworn according to law, doth depose and say: That on or about the 8th day of May, A. D. 1922, and during the interval as specified by the Pennsylvania Railroad Company, namely an election of employe representatives, I was called into the office of the yard master at Harrisburg, Pennsylvania, A. A. Snook, who told me the ballots for the election were in the office and that I should sign for one; my reply to him was that I was not interested in this election inasmuch as I was not a member of that association, whereupon I was told by Mr. Snook that I would have to sign for the ballot and declare myself either for or against same and that if I did not affix my signature for the

ballot I would be held out of employment until I did. Not desiring to jeopardize my position and earning power I affixed my signature as ordered.

"(Signed) W. H. Romig.

"Sworn to and subscribed before me this 29th day of May, 1922, George D. Herbert, Alderman.

"My commission expires first Monday in January, 1926."

Exhibit No. 5 states as follows:

"State of Pennsylvania, County of Dauphin, ss.

"Personally appeared before me, George D. Herbert, an Alderman in and for the County of Dauphin, John A. Powell of Lemoyne, Cumberland County, Pennsylvania, who being duly sworn according to law, doth depose and say: That on or about the 8th day of May, A. D. 1922, I. L. Nisley, chief clerk to the assistant freight train master, in the Harrisburg yards, gave me a message by telephone to pin on the ballot list a notice to all clerks that they would have to sign the list whether they received ballots or not, which I did; all clerks had to sign this list whether they received the ballot or rejected it, including myself. All clerks belonging to the Brotherhood of Railway Clerks had previously refused to sign the list and in order to avoid suspension of earning power I signed the ballot, but have refused to vote, and returned ballot to the assistant train master unopened.

"(Signed) John A. Powell.

"Sworn to and subscribed before me this 30th day of May, 1922. (Signed) George D. Herbert, Alderman.

"My commission expires first Monday in January, 1926."

Exhibit No. 6:

"State of Pennsylvania, County of Perry.

"Personally appeared before me, a notary public,

in and for said county and state, Thomas N. Bitting, Pennsylvania Railroad clerk, Harrisburg yard, and a resident of Newport, Perry County, Pennsylvania, who, having been sworn according to law, doth depose and say:

"That he received instructions from assistant yard master G. R. Holland, who claims that he received his instructions from Freight Train Master R. G. Cunningham, that we would be relieved from duty until such a time as we placed signature upon blanks accompanying official ballot for election of officers, Pennsylvania System Clerks Association, Eastern Region, May 15th, 1922.

"(Signed) Thomas N. Bitting.

"Sworn to and subscribed before me the 31st day of May, 1922, (signed) Frank P. Whitmer, Notary Public. My commission expires March 25th, 1925."

Exhibit No. 7:

"Philadelphia, Pennsylvania, June 7th, 1922.

"On or about the 12th day of May, the chief clerk, Grant Greininger, in the office of Mr. B. P. Knowles, freight agent for the Pennsylvania Railroad Company, located at Columbia, Pennsylvania, came to me with a ballot for which he said I was to sign upon an election roll, said ballot to be signed in connection with the company's plan of employe representation. My reply to him was that I was not a member of the Association that this election was to cover, and therefore did not care for the ballot, or did not desire to sign this roll, whereupon Mr. Greininger said to me, 'You would not want me to go back to Mr. Knowles, and tell him that you have refused to receive this ballot.' Feeling that if I did not sign as instructed by the chief clerk, that I would be jeopardizing my position and

earning power, I did so sign, however, against my will and personal feeling.

"(Signed) John F. Metzger.

"The seventh day of June, A. D. 1922, personally appeared before me, M. B. Hamilton, the above named, John F. Metzger, and acknowledged the aforegoing instrument to be his act and deed, and desired the same might be recorded as such according to law. Witness my hand and seal: (Signed) M. B. Hamilton, Notary Public, 1807 Arch Street, Philadelphia. Commission expires September 17, 1925."

The Chairman: How many more of those have you?

Mr. Fenstermacher: I have four or five.

The Chairman: Are they all along the same line?

Mr. Fenstermacher: Mr. Governor, the affidavits I am about to read to you are very brief and they are affidavits that have just come into my hands and will prove to you conclusively that the company plan of employe representation is not being received in the mutual and amicable way that they have stated. So I want to read these to you and have them appear in the record.

The Chairman: You may put them in the record. I was thinking that the hour is late and that perhaps it would be better to simply place them in the record.

Mr. Fenstermacher: May I read just these few?

The Chairman: Yes, if you insist on it.

Mr. Fenstermacher: Exhibit No. 8:

"Philadelphia, Pennsylvania, May 15th, 1923.

"This is certify that I, the undersigned, while in the performance of my duties as station baggageman at Broad Street Station, Philadelphia, Pennsylvania, did witness the following incident occurring on or about May 3rd, 1923, relative to the distribution of copies of 'Rules and Regulations governing the Penn-

sylvania Railroad System Miscellaneous Forces' Association of the Operating Department—Eastern Region.'

"While in the company of Charles Lacey, a fellow employee, we were approached by Vernon Henry, assistant baggage agent at Broad Street Station who had in his possession the aforesaid copies and was soliciting signatures of the employes on delivery of a copy to each employe.

"Charles Lacey was operating a truck of United States Mail for train loading when he was hailed by said Mr. Henry and told to sign a paper for a copy of above mentioned rules. Mr. Lacey replied that he did not want it, he did not want it. Mr. Henry then said, 'Charley, you must sign for it.' Mr. Lacey again refused, whereupon Mr. Henry exercised his authority by immediately removing Mr. Lacey from the performance of his duties and assigned another employe to perform the same.

"Under this coercion Mr. Lacey then signed for the copy of the aforementioned rules in order that he might retain his employment with the Pennsylvania Railroad System.

"After witnessing the foregoing incident of coercion I saw that there would be no other alternative but for me to sign for one of the copies in question.

"Due to the death of the wife of Mr. Lacey as of this date, it is accordingly impossible for him to be present at the time this deposition is being made by the undersigned.

"(Signed) Charles Guiga.

"Sworn to and subscribed to before me this sixteenth day of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 6, 1923."

Exhibit No. 9.

"Philadelphia, Pennsylvania, May 16th, 1923.

"This is to certify that I, the undersigned, while in the performance of my duties this date at West Philadelphia Station was called in conversation with my immediate superior Mr. Cunniff, the baggage agent, relative to the ballots being circulated by the Pennsylvania Railroad System, which were in the hands of the timekeeper, Arthur W. Greer, who was also accompanying us.

"Mr. Cunniff said, 'I have a ballot here and I want you to sign for same.' I replied, 'You understand, Mr. Cunniff, that I am not a member of this Association.' He replied, 'Indeed you are. When you became an employe of the Pennsylvania Railroad, you agreed to abide by the rules promulgated by this company.'

"I told him of new conditions being brought into existence through the War Period, more favorable to employes, particularly through legislation, giving employes the privilege of choosing their own representatives.

"This was of no avail and he compelled me to sign for the ballot.

"(Signed) Albert G. Fettes.

"Sworn to and subscribed to before me this sixteenth day of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 6, 1927."

Exhibit No. 10:

"Philadelphia, Pennsylvania, May 15th, 1923.

"This is to certify that I, the undersigned, while in the performance of my duties as station baggageman in Broad Street Station, Philadelphia, Pennsylvania, was called into the office by my immediate superior, J. C. Cunniff, relative to the so-called ballots

being circulated by the Pennsylvania Railroad System which were in his hands at the time.

"Mr. Cunniff said to me, 'Here is your ballot.' I replied, 'I don't want no ballot.' Mr. Cunniff then said, 'You take this ballot and sign for it as those two men on the ballot got your two cents increase last July.' I answered, 'You may think so, but I don't. I may take the ballot but I don't have to vote.' That caused him to reply, 'You have to take the ballot, that is your lookout.'

"Under these coercive circumstances I then signed for the ballot.

"(Signed) Hugh Barr.

"Sworn to and subscribed to before me this sixteenth day of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 6th, 1927."

Exhibit No. 11:

"Philadelphia, Pennsylvania, May 15th, 1923.

"This is to certify that we, the undersigned, in the performance of our duties as station baggagemen in Broad Street Station, Philadelphia, Pennsylvania, we were called into the office by our immediate superior, J. C. Cunniff, relative to the so-called ballots being circulated by the Pennsylvania Railroad System which were in his hands at the time.

"Mr. Cunniff said to us, 'Sign for these ballots.' We then asked if we were compelled to sign for the same. He then replied, 'Yes.' We all then inquired as to whether it would be permissible to sign for the ballots under protest. One of our number was of a contrary nature according to Mr. Cunniff and we were informed by Mr. Cunniff that we had better serve our best interests by signing for said ballots, and he further informed us that the organization represented by the candidates on the ballots in question was the only

bona fide organization representing the employes on the Pennsylvania Railroad System.

"Under these embarrassing and threatening circumstances we then signed for the ballots under protest.

"(Signed) Thomas F. Maher, Francis Gormley, Raymond B. Oliphant.

"Sworn to and subscribed to before me, this day the sixteenth of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 6, 1927."

Exhibit No. 12:

"Philadelphia, Pennsylvania, May 15th, 1923.

"This is to certify that I, the undersigned, in the performance of my duties as station baggageman in Broad Street Station, Philadelphia, Pennsylvania, was called into the office of my immediate superior, J. C. Cunniff, relative to the so-called ballots being circulated by the Pennsylvania Railroad System which were in his hands at that time.

"Mr. Cunniff then requested me to sign my name and receive a ballot. I then said, 'What is this, another compulsory proposition?'

"Mr. Cunniff then said, 'You want your job, don't you? Well, this is just as compulsory, sign your name.' I then signed my name and received a ballot.

"(Signed) John E. Stiles.

"Sworn to and subscribed to before me this 16th day of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 6, 1927."

Exhibit No. 13:

"Philadelphia, Pennsylvania, May 16th, 1923.

"This is to certify that I, the undersigned, while in the performance of my duties as station baggageman at Broad Street Station, Philadelphia, Pennsyl-

vania, was approached on the mail platform on or about May 3rd, 1923, by Vernon Henry, assistant baggage agent, relative to the distributing of copies of 'Rules and Regulations governing the Pennsylvania Railroad System Miscellaneous Forces' Association of the Operating Department—Eastern Region.'

"Mr. Henry said, 'Tom, sign for this book of rules.' I replied, 'What is the consequence if I don't sign for them?' Mr. Henry replied, 'My orders from the baggage agent are to take you off the job if you don't sign.'

"Under these coercive circumstances I received a copy of said Rules and signed for same.

"During this incident a fellow employe, Francis Gormley, was within hearing and so attests herein accordingly.

"(Signed) Thomas F. Maher.

"Witness, Francis Gormley.

"Sworn to and subscribed to before me this 16th day of May, 1923. (Signed) Daniel Sutch Wells, Notary Public. My commission expires March 8, 1927."

With the filing of those in the record, that will conclude, so far as we are concerned, with the submission of evidence to prove our contention that coercion and intimidation has been used on the part of the management to compel the employes under the pressure brought upon them that if they do not accept the company's plan and go along with it, it means their dismissal from the service and thus the ending of their earnings. Men who have reached the age of retirement, with a few years to go, have been taken off the job and left off until they did sign said ballots.

That is as far as I have to go.

Mr. FitzGerald: Mr. Chairman, I would like to file these documents as exhibits. I find that these agreements are signed by the transportation organizations on the Pennsylvania.

The Chairman: You want to file them as exhibits?

Mr. FitzGerald: Yes.

The Chairman: Very well.

(The documents so offered and received bear on their title pages, respectively, the following:

"Pennsylvania System, excluding Ohio River & Western Railway, Waynesburg and Washington Railroad. Schedule of regulations and rates of pay for the government of engineers in road and yard service. Regulations effective August 1, 1921, rates effective July 1, 1921."

"Pennsylvania System, excluding Ohio River & Western Railway, Waynesburg and Washington Railroad. Schedule of regulations and rates of pay for the government of firemen and hostlers in road and yard service. Regulations effective August 1, 1921, rates effective July 1, 1921."

"Pennsylvania System, excluding Ohio River & Western Railway, Waynesburg and Washington Railroad. Schedule of regulations and rates of pay for the government of conductors, trainmen and switchtenders in road and yard service. Regulations effective August 1, 1921, rates effective July 1, 1921."

Mr. FitzGerald: One other point I think would be illuminating to the Board, and I would like to have Mr. Briceland, who has been with the Pennsylvania some twenty years, I think, as an employe, and who was general chairman at the time this matter came up, state for the information of the Board the exact reports they got as to what the result of the ballot was. It contradicts a good deal of what Mr. Whitler said. Somebody apparently is wrong.

Mr. Briceland, will you tell the Board what the reports were from the ballots at the time they were tabulated?

EXHIBIT "L."
(No. 2869—In Equity.)

THE PENNSYLVANIA SYSTEM

CLERKS' ASSOCIATION

OF THE

OPERATING DEPARTMENT

EASTERN REGION

BY-LAWS

EFFECTIVE AUGUST 1, 1921

THE PENNSYLVANIA SYSTEM
CLERKS' ASSOCIATION
OF
THE OPERATING DEPARTMENT
EASTERN REGION

NEW JERSEY DIVISION
EASTERN PENNSYLVANIA DIVISION
SOUTHERN DIVISION
CENTRAL PENNSYLVANIA DIVISION
PHILADELPHIA TERMINAL DIVISION

COPY OF MEMORANDUM OF UNDERSTANDING COVERING METHOD TO BE FOLLOWED IN THE HANDLING OF QUESTIONS BETWEEN THE PENNSYLVANIA SYSTEM MANAGEMENT, EASTERN REGION, AND ITS EMPLOYES IN THE CLERICAL FORCES.

PREAMBLE.

In order to form an organization to establish satisfactory working conditions, adjust differences as they may arise and promote a mutual understanding between the officers of the Pennsylvania System, Eastern Region, and the clerical forces in the Operating Department under General and Division Superintendents, Eastern Region, these by-laws are hereby adopted.

This plan for handling all matters can be successful only by full conscientious co-operation on the part of both the management and employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting these matters.

TITLE.

This organization shall be known as THE PENNSYLVANIA SYSTEM CLERKS' ASSOCIATION OF THE OPERATING DEPARTMENT, EASTERN REGION.

ARTICLE I.

MEMBERSHIP.

SECTION 1. All employes who are actively engaged in the clerical forces in the Operating Department under General and Division Superintendents, Eastern Region, Pennsylvania System, who have been in the service of the Company for six months or more, and who are not within one of the two following classes are entitled to membership in this Association:

(*a*) Chief Clerks to Supervisory Agents, Superintendents and Staff Officers, General Superintendents and Staff Officers.

(*b*) Those who, because of work of a special nature, devote only part of their time to the Company and are paid special rates therefor.

SEC. 2. Membership in this Association shall terminate on severance of active employment in the service of the Company.

ARTICLE II.

REPRESENTATION.

SECTION 1. Those who may participate in this Association, as enumerated in Article I, Section 1, on each division shall be entitled to elect from among their number three representatives and, in like manner, those under each General Superintendent shall be entitled to three representatives.

SEC. 2. The representatives elected at the General Election in June, 1921, shall hold office for one,

two and three years. The representative receiving the highest number of votes, three years; the representative receiving the next highest number of votes, two years, and the representative receiving the next highest number of votes, one year. Representatives elected each year thereafter shall serve for a period of three years. Representatives shall be eligible for re-election.

SEC. 3. A representative shall be deemed to have vacated office upon severance of active relations with the Company or upon assuming a status as enumerated in Article I, Section 1, paragraphs (*a*) and (*b*).

SEC. 4. In case of vacancies on a Local Committee the vacancy shall be filled by the remaining members of the committee. In the event they cannot reach a decision, the General Division Chairman shall cast the deciding vote. In the event that there are two or more vacancies occurring on one Local Committee at the same time, the vacancies so occurring shall then be filled by the General Committee. The representative or representatives thus elected shall serve until the next election.

ARTICLE III.

QUALIFICATIONS OF VOTERS AND REPRESENTATIVES.

SECTION 1. All employes who are entitled to participate in this Association, as defined in Article I, shall be entitled to petition for nominees and vote at all elections.

SEC. 2. Those employes who are entitled to participate in this Association, who have had two years of active service with the Company prior to the date of election, who are American citizens, and who are 21 years of age or over on the date of election, shall be eligible to the office of representative.

Article IV.

NOMINATIONS AND ELECTIONS.

Section 1. Nominations and elections shall be held annually in the month of May.

Sec. 2. Nomination shall be held on the first Monday and election on the third Monday in the month named. In the event of either of these days being a holiday, the day immediately following shall be substituted.

Sec. 3. Nominations and elections shall be conducted by the members of this Association in accordance with the rules and regulations prescribed by the Regional Joint Committee, acting as a Rules Committee, with only such assistance from the management as may be required by said Committee.

Sec. 4. Elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any fraud in the counting of ballots.

Sec. 5. Nominations shall be by petition. Petition signed by twenty-five (25) qualified voters on a Superintendent's Division and ten (10) qualified voters in a General Superintendent's Department shall place the name of the one petitioned for upon the ballot.

Sec. 6. The election ballot for each Division or General Division shall contain the names of all those placed in nomination as a result of petition on that Division or General Division.

Sec. 7. The number of candidates for which a voter is entitled to vote shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

SEC. 8. The voter shall indicate his preference on the election ballot by placing a cross (x) opposite the name or names of the candidates he wishes to elect. Any other mark or marks shall render the ballot void.

SEC. 9. The Regional Joint Committee, acting as a Rules Committee, shall determine:

(*a*) The type and location of ballot boxes and voting booths.

(*b*) The hours during which the voting will be conducted.

(*c*) The form of letter ballot to be used by those voting by mail.

(*d*) The conditions under which a voter will be permitted to vote by mail.

SEC. 10. The candidate or candidates receiving the highest number of votes shall be declared elected. In the event of a tie, the Regional Joint Committee, acting as a Rules Committee, shall order a special election to break the tie.

SEC. 11. In the event of a controversy arising concerning any election, it shall be referred to and decided by the Regional Joint Committee, acting as a Rules Committee.

SEC. 12. Immediately following the counting of ballots, the Regional Joint Committee, acting as a Rules Committee, shall prepare an election certificate, a copy of which shall be furnished each representative elected, a copy posted on convenient bulletin board, and a copy furnished to the Division Superintendent.

ARTICLE V.

LOCAL COMMITTEES.

SECTION 1. The elected representatives on each Division and General Division shall constitute the Lo-

cal Committee on that Division or General Division and shall meet on the first Monday in June of each year for the purpose of organizing. At this meeting, each Local Committee shall elect a Chairman, Vice Chairman and Secretary from their number to serve for one year.

SEC. 2. Meetings of the Local Committees may be called by their Chairmen as occasion demands.

ARTICLE VI.

GENERAL COMMITTEES.

SECTION 1. The Chairmen of the Local Committees on the various Divisions shall constitute a General Committee for that General Division, and shall meet on the second Monday in June of each year for the purpose of organizing. At this meeting, each General Committee shall elect a Chairman, Vice Chairman and Secretary from their number to serve for one year.

SEC. 2. Meetings of the General Committees may be called by their Chairmen as occasion demands.

ARTICLE VII.

THE REGIONAL COMMITTEE.

SECTION 1. The Chairmen of the General Committees on a Region together with a representative elected by the Chairmen of the General Superintendents' Department Committees, from among their number, shall constitute the Regional Committee and shall meet on the third Monday in June of each year for the purpose of organizing. At this meeting the Committee shall elect from their number a Chairman, Vice Chairman and Secretary to serve for one year.

SEC. 2. Meetings of the Regional Committee may be called by their Chairman as occasion demands.

Article VIII.

THE REGIONAL JOINT COMMITTEE.

Section 1. The Regional Committee, together with an equal number of representatives appointed by the management, shall constitute the Regional Joint Committee and shall meet on the fourth Monday in June of each year for the purpose of organizing.

Sec. 2. The officers of the Committee shall consist of a Chairman and Vice Chairman who shall be elected for terms of six months each. The election will be held at the regular meeting of the Committee in July and January of each year and the Chairman and Vice Chairman will take office immediately upon election.

Sec. 3. The office of the Chairman shall be filled alternately from the representatives of the management and the representatives of the employes. While the office of Chairman is being filled by a representative of the management the office of Vice Chairman shall be filled by a representative of the employes; likewise when the office of Chairman is being filled by a representative of the employes the office of Vice Chairman shall be filled by a representative of the management.

Sec. 4. Stated meetings of the Regional Joint Committee shall be held on the fourth Monday, bimonthly, throughout the year, commencing with the July meeting each year.

Sec. 5. Special meetings of the Regional Joint Committee may be called by the Chairman as occasion demands.

SEC. 6. The management and the employes will have equal voting power and not less than two-thirds vote will be necessary to reach a decision.

ARTICLE IX.

PROCEDURE FOR ADJUSTMENT.

SECTION 1. If an employe is not satisfied with the decision of the Division or General Superintendent on any controversial matter, he may place same in the hands of the Local Committee which is authorized to handle such matters on the respective Division or General Division on which the question arose.

SEC. 2. The Local Committee on a Division or General Division will arrange to handle the matter with their respective Division Superintendent or General Superintendent, if they deem it proper.

SEC. 3. In the event that the Local Committee on a Division cannot effect a satisfactory settlement with the Division Superintendent, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of Local Committee.
(4) Position of Division Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the Division Superintendent to the General Superintendent.

(*b*) By the Local Committee to the General Committee.

SEC. 4. The General Committee may handle matters coming from the Local Committees on the Divisions before the General Superintendent, and failing a satisfactory settlement, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of General Committee.
(4) Position of General Superintendent.

Copies of this joint submission shall be forwarded:

(*a*) By the General Superintendent to the General Manager

(*b*) By the General Committee to the Regional Committee.

SEC. 5. The Regional Committee may handle matters coming from the General Committees on the Region before the General Manager, and failing a satisfactory settlement, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed-upon facts.
(3) Position of Regional Committee.
(4) Position of General Manager.

A copy of this joint submission shall be forwarded to the Chairman of the Regional Joint Committee.

SEC. 6. The Regional Joint Committee shall handle matters coming from the Regional Committee. In case a decision is not reached by the Regional Joint Committee not later than subsequent bi-monthly meeting at which the case was first brought up, further procedure will be had as determined upon at the time of such disagreement.

ARTICLE X.

GENERAL.

SECTION 1. In all cases where a meeting of a committee is scheduled for a certain day and that day is a holiday, the day immediately following shall be substituted.

SEC. 2. Unless otherwise specified, terms of representatives and of all committee officers shall date from July 1st of each year.

SEC. 3. Matters may be referred to the various committees by officials of the company.

SEC. 4. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

ARTICLE XI.

AMENDMENTS.

SECTION 1. Amendments to these by-laws may be made by a majority vote of the members of this Association at any regular election after the proposed amendments have been passed upon by the Regional Joint Committee.

SEC. 2. Amendments may be proposed by the Regional Joint Committee, the Regional Committee, any General Committee or Local Committee or by petition of any 50 members of this Association to the Regional Joint Committee.

SEC. 3. It shall be incumbent upon the Regional Joint Committee to render a report, either favorable or unfavorable, upon all such proposed amendments at the earliest possible date, and if favorably reported submit the same to the voters either at a general or special election.

These by-laws shall regulate the relations between the management of the Pennsylvania System, Eastern

Region, and the members of this Association on and after August 1, 1921, and shall continue in full force and effect until either party gives thirty days' notice to the other of a desire to change.

FOR THE MANAGEMENT:

C. S. KRICK,
General Manager,
Eastern Region,
Pennsylvania System.

FOR THE EMPLOYES:

J. WM. WITTEKINDT,
Baltimore Division. General Chairman.

O. C. MILLER,
Tyrone Division.

C. C. ENGLISH,
Middle Division.

A. J. GARREN,
New York Division.

D. N. POLLARD,
Norfolk Division.

C. K. BENTLEY,
Cresson Division.

H. E. HUDSON,
Delaware Division.

A. E. SCHELLEASE,
Cumberland Valley Division.

JAMES J. DWYER,
Trenton Division.

L. L. GAGER,
Schuylkill Division.

C. N. CRUMBLING,
Central Penna. Division.

JAMES M. REESE,
Southern Division.

P. J. CUNNINGHAM,
Philadelphia Terminal Div.

E. A. KIDNEY,
New Jersey Division.

M. T. MILLER,
Elmira Division.

J. A. MCLAUGHLIN,
Maryland Division.

JAS. MCDONALD,
Sunbury Division.

CHAS. F. SPEARING,
Williamsport Division.

OSCAR HOWE,
Philadelphia Division.

M. M. GREGORY,
Trenton Shops.

S. T. MCDOWELL,
Eastern Penna. Division.

General Committee representing Clerical Forces under the jurisdiction of General and Division Superintendents, Eastern Region, Pennsylvania System.

EXHIBIT "M."
(Filed November 14, 1923.)

COPY OF

MEMORANDUM OF UNDERSTANDING COVERING METHOD TO BE FOLLOWED IN THE HANDLING OF QUESTIONS BETWEEN THE PENNSYLVANIA SYSTEM MANAGEMENT AND ITS EMPLOYES IN ENGINE AND TRAIN SERVICE.

PREAMBLE:

1. The outline of the method in which controversial matters are to be handled as given below is for the purpose of expeditious adjustment of matters presented, to the end that there may be a satisfied spirit among the officers and employes, and it is important, therefore, that so far as is possible, decisions will be reached at the time of meeting, such decision to be confirmed in writing as promptly thereafter as is possible.

2. This plan for handling schedule and other matters can be successful only by full and conscientious co-operation on the part of both the Management and the employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting these matters.

DIVISIONAL HANDLING.

MONTHLY MEETINGS—SUPERINTENDENT AND LOCAL CHAIRMEN:

3. Each Division Superintendent will hold joint monthly meetings with the Local Chairmen representing the Engineers, Firemen, Hostlers, Conductors, Trainmen and Switchtenders, for the purpose of disposing, if possible, of all controversial matters arising

on the division, and these matters may be placed before the meeting by either the employes or the Superintendent.

4. The Local Chairmen will furnish the Superintendent not less than five days in advance of the meeting a list of the questions they desire to discuss and the Superintendent will likewise advise all Local Chairmen not less than five days in advance of the meeting of the questions he desires to have discussed.

SCHEDULE—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

5. Questions relating to schedule matters which are discussed and agreed upon between the Superintendent and Local Chairmen will be placed in effect at once and referred by them to the Joint Reviewing Committee immediately for review with a joint statement prepared by the Superintendent and Local Committee stating the case at hand and giving their reasons for such agreement. Copies of this joint submission will be furnished the Local Chairman, the General Superintendent and the General Manager.

SCHEDULE—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

6. In cases where the Superintendent and Local Committee are not agreed that the language of a schedule rule exactly covers the situation at hand, and there having been no interpretation placed on same by the Joint Reviewing Committee, they will at once prepare and refer to the Joint Reviewing Committee for decision a joint submission showing: (1) joint statement of agreed upon facts; (2) position of Committee; (3) position of Superintendent. Copies will be furnished the Local Chairman, General Superintendent and General Manager.

INTERPRETATIONS OF SCHEDULE—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

7. In cases where the Superintendent and Local Committee are not agreed that an interpretation that has been placed on a Rule by the Joint Reviewing Committee exactly covers the situation at hand, a joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

DISCIPLINE APPEALS—METHOD OF HANDLING:

8. Discipline matters subject of appeal by Local Chairman will be handled in accordance with schedule regulations, or may be handled at the monthly meetings providing the employe involved has complied with the regulations covering the method of appeal from discipline.

9. In the event the Local Chairman is not satisfied with the decision of the Superintendent on a discipline case, joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

NOTE:—In discipline cases arising on the Philadelphia Terminal Division and the Pittsburgh Terminal Division appeal from the decision of the Super-

intendent will be made by the General Chairman to the General Manager. In discipline cases arising at Altoona Works, appeals from the decision of the Works Manager will be made to the Works Manager as General Manager by the General Chairman.

OTHER THAN SCHEDULE AND DISCIPLINE MATTERS—METHOD OF HANDLING:

10. In addition to schedule and discipline matters, all other controversial questions will be handled at the Superintendent's monthly meeting. In case Local Chairman or Committee is not satisfied with the Superintendent's decision, joint submission will be made in the same form as outlined in Paragraph 9.

GENERAL DIVISIONAL HANDLING.

MONTHLY MEETINGS—GENERAL SUPERINTENDENT AND GENERAL CHAIRMEN:

11. Each General Superintendent will hold joint monthly meetings with the General Chairmen representing the Engineers, Firemen, Hostlers, Conductors, Trainmen and Switchtenders for the purpose of disposing, if possible, of all controversial matters referred to him by the General Chairmen and upon which the Superintendent and the Local Chairmen have been unable to agree. Questions for discussion will be referred to the General Superintendent by the General Chairmen not less than five days in advance of meeting and the General Superintendent will likewise furnish the General Chairmen a list of questions he desires to discuss not less than five days in advance of meeting.

OTHER THAN SCHEDULE MATTERS—METHOD OF HANDLING:

12. In the event the General Chairman is not satisfied with the decision of the General Superintendent

on any controversial matters, other than schedule matters, referred to the General Superintendent by the General Chairman, such cases will at once be jointly referred by the General Superintendent and the General Chairman to the General Manager giving: (1) joint statement of agreed upon facts; (2) position of Committee; (3) position of General Superintendent. Copies of this joint submission will be furnished the General Chairman.

SCHEDULE—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

13. Questions relating to schedule matters which are discussed and agreed upon between the General Superintendent and the General Chairmen will be placed in effect at once and referred by them to the Joint Reviewing Committee immediately for review with a joint statement prepared by the General Superintendent and General Committee, stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman and the General Manager.

INTERPRETATIONS OF SCHEDULE—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

14. In cases where the General Superintendent and General Committee are not agreed that an interpretation that has been placed on a rule by the Joint Reviewing Committee exactly covers the situation, a joint statement will at once be prepared by the General Superintendent and the General Chairman and referred to the General Manager giving: (1) a joint statement of agreed upon facts; (2) position of Committee; (3) position of General Superintendent. Copy of this joint submission will be furnished the General Chairman.

REGIONAL HANDLING.

MONTHLY MEETINGS—GENERAL MANAGER AND GENERAL CHAIRMEN:

15. Each General Manager will hold joint monthly meetings with the General Chairmen representing the Engineers, Firemen, Hostlers, Conductors, Trainmen and Switchtenders for the purpose of disposing, if possible, of all questions which have been submitted to him by the General Chairmen as a result of disagreeing with decisions of the General Superintendent. General Chairmen will furnish the General Manager not less than five days before meeting, a list of subjects to be discussed and the General Manager will likewise furnish list to the General Chairmen not less than five days before meeting, of questions he desires to discuss.

SCHEDULE AND OTHER MATTERS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

16. All controversial matters, including those referred to in Paragraph 7, which have been appealed to the General Manager as a result of the General Superintendent and General Committee not being able to arrive at a common understanding will, if not disposed of between the General Manager and the General Chairmen, be referred by them to the Joint Reviewing Committee for decision, giving: (1) joint statement of agreed upon facts; (2) position of Committee; (3) position of General Manager. Copies of this joint submission will be furnished the General Chairman.

SCHEDULE—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

17. Questions relating to schedule matters which are discussed and agreed upon between the General

Manager and the General Chairmen will be placed in effect at once and be referred by them immediately to the Joint Reviewing Committee for review with a joint statement prepared by the General Manager and the General Committee stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman.

JOINT REVIEWING COMMITTEE.

INTERPRETATIONS—PROMULGATION OF:

18. Interpretations of schedule matters made by the Joint Reviewing Committee will be promulgated to all interested railroad officers. A sufficient number of copies of these interpretations will be furnished the General Chairmen for distribution to their Local Chairmen.

SCHEDULE OF MONTHLY MEETINGS.

19. The schedule of monthly meetings for the purpose of carrying out the provisions set forth above will be arranged so as to afford the General Chairmen sufficient latitude to satisfactorily cover the schedule of meetings and to the end that the cases may be carried through monthly meetings to the Joint Reviewing Committee, if necessary, without delay.

MAKE-UP OF JOINT REVIEWING COMMITTEE.

20. The Joint Reviewing Committee shall consist, for the Management, of two representatives from each Region of the System; for the employes, the General Chairmen of the Engine and Train Service Employes, which, as at present constituted, consists of nine (9) members.

METHOD TO BE FOLLOWED BY JOINT REVIEWING COMMITTEE.

21. In all matters other than discipline the entire Committee will sit.

22. In cases of discipline the representatives of the Management in the Region where the case arises, together with the representatives of the employe involved in that Region where the case arises, will not sit on the Committee but will present the case to the remaining members of the Committee, who will hear and determine the matter at issue.

23. The Management and the employes will have equal voting power and not less than a two-thirds vote will be necessary to reach a decision.

24. In case a decision is not reached by the Joint Reviewing Committee not later than subsequent monthly meeting at which the case was first brought up, further procedure will be had as determined upon at the time of such disagreement.

25. Meeting place of the Joint Reviewing Committee will be fixed from time to time by the Committee.

The Joint Reviewing Committee will begin at once to function on all questions submitted except interpretations of schedules, and will function on schedule interpretations when the System schedules are completed.

The foregoing becomes effective January 1, 1921, and shall remain in full force and effect until after

thirty days' notice has been given by either party to the other of a desire to change.

FOR THE MANAGEMENT:

C. S. KRICK,
General Manager,
Eastern Region.

R. E. MCCARTY.
General Manager,
Central Region.

T. B. HAMILTON,
General Manager,
Northwestern Region.

I. W. GEER,
General Manager,
Southwestern Region.

P. F. SMITH, JR.,
Altoona Works Manager.

FOR THE EMPLOYES:

WM. PARK,
General Chairman,
B. of L. E.

H. R. KARNS,
General Chairman,
B. of L. E.

HUGO W. PFENNING,
General Chairman,
B. of L. E.

S. C. COWEN,
General Chairman,
O. R. C.

W. T. SAUL,
General Chairman,
O. R. C.

H. E. CORE,
General Chairman,
B. of L. F. & E.

D. D. MILLER,
General Chairman,
B. of L. F. & E.

R. A. KNOFF,
General Chairman,
B. of R. T.

C. E. MUSSER,
General Chairman,
B. of R. T.

December 29, 1920.

EXHIBIT "O."
(Filed November 14, 1923.)

Memorandum of Understanding Covering Method to Be Followed in the Handling of Questions Between the Pennsylvania System Management and Its Employes Covered By the Maintenance of Way Regulations.

Preamble:

1. The outline of the method in which controversial matters are to be handled as given below is for the purpose of expeditious adjustment of matters presented, to the end that there may be a satisfied spirit among the officers and employes, and it is important, therefore, that, so far as is possible, decisions will be reached at the time of meeting, such decision to be confirmed in writing as promptly thereafter as is possible.

2. This plan for handling regulation and other matters can be successful only by full and conscientious co-operation on the part of both the management and the employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting these matters.

Divisional Handling.

Monthly Meetings—Superintendent and Local Chairman:

3. Each Division Superintendent will hold monthly meetings with the Local Chairman representing the employes covered by the Maintenance of Way Regulations, for the purpose of disposing, if possible, of all controversial matters arising on the Division, and these matters may be placed before the meeting by either the employes or the Superintendent.

4. The Local Chairman will furnish the Superintendent not less than five days in advance of the meeting a list of the questions he desires to discuss, and the Superintendent will likewise advise the Local Chairman not less than five days in advance of the meeting of the questions he desires to have discussed.

REGULATIONS—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

5. Questions relating to regulations which are discussed and agreed upon between the Superintendent and Local Chairman will be placed in effect at once and referred by them to the Reviewing Committee immediately for review, with a joint statement prepared by the Superintendent and Local Committee stating the case at hand and giving their reasons for such agreement. Copies of this joint submission will be furnished the Local Chairman, the General Superintendent and the General Manager.

REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

6. In cases where the Superintendent and Local Committee are not agreed that the language of a regulation exactly covers the situation at hand, and there having been no interpretation placed on same by the Reviewing Committee, they will at once prepare and refer to the Reviewing Committee for decision a joint submission showing: (1) joint statement of agreed-upon facts; (2) position of Committee; (3) position of Superintendent. Copies will be furnished the Local Chairman, General Superintendent and General Manager.

INTERPRETATIONS OF REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

7. In cases where the Superintendent and Local Committee are not agreed that an interpretation that

has been placed on a regulation by the Reviewing Committee exactly covers the situation at hand, a joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed-upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

DISCIPLINE APPEALS—METHOD OF HANDLING:

8. Discipline matters subject of appeal by the Local Chairman will be handled in accordance with Regulations, or may be handled at the monthly meetings providing the employe involved has complied with the regulations covering the method of appeal from discipline.

9. In the event the Local Chairman is not satisfied with the decision of the Superintendent on a discipline case, a joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed-upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

OTHER THAN REGULATION AND DISCIPLINE MATTERS—METHOD OF HANDLING:

10. In addition to regulation and discipline matters, all other controversial questions will be handled at the Superintendent's monthly meeting. In case the

Local Chairman or Committee is not satisfied with the Superintendent's decision a joint submission will be made in the form outlined in Paragraph 9.

GENERAL—DIVISIONAL HANDLING.

MONTHLY MEETINGS—GENERAL SUPERINTENDENT AND REGIONAL CHAIRMAN:

11. Each General Superintendent will hold monthly meetings with the Regional Chairman representing the employes covered by the Maintenance of Way Regulations for the purpose of disposing, if possible, of all controversial matters referred to him by the Regional Chairman and upon which the Superintendent and the Local Chairman have been unable to agree. Questions for discussion will be referred to the General Superintendent by the Regional Chairman not less than five days in advance of meeting, and the General Superintendent will likewise furnish the Regional Chairman a list of questions he desires to discuss not less than five days in advance of meeting.

OTHER THAN REGULATION MATTERS—METHOD OF HANDLING:

12. In the event the Regional Chairman is not satisfied with the decision of the General Superintendent on any controversial matters, other than regulation matters, referred to the General Superintendent by the Regional Chairman, such cases will at once be jointly referred by the General Superintendent and the Regional Chairman to the General Manager giving: (1) joint statement of agreed-upon facts; (2) position of Regional Chairman; (3) position of General Superintendent. Copies of this joint submission will be furnished the General Chairman.

REGULATION—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

13. Questions relating to regulation matters which are discussed and agreed upon between the General Superintendent and the Regional Chairman will be placed in effect at once and referred by them to the Reviewing Committee immediately for review with a joint statement prepared by the General Superintendent and Regional Chairman, stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman and the General Manager.

INTERPRETATION OF REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

14. In cases where the General Superintendent and Regional Chairman are not agreed that an interpretation that has been placed on a regulation by the Reviewing Committee exactly covers the situation, a joint statement will at once be prepared by the General Superintendent and the Regional Chairman and referred to the General Manager giving: (1) joint statement of agreed-upon facts; (2) position of Regional Chairman; (3) position of General Superintendent. Copy of this joint submission will be furnished the General Chairman.

REGIONAL HANDLING.

BI-MONTHLY MEETINGS—GENERAL MANAGER AND GENERAL CHAIRMAN:

15. Each General Manager will hold bi-monthly meetings with the General Chairman representing the employes covered by the Maintenance of Way Regulations for the purpose of disposing, if possible, of all questions which have been submitted to him by the General Chairman as a result of disagreeing with de-

cisions of the General Superintendent. The General Chairman will furnish the General Manager not less than five days before meeting a list of subjects to be discussed, and the General Manager will likewise furnish list to the General Chairman, not less than five days before meeting, of questions he desires to discuss.

REGULATION AND OTHER MATTERS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

16. All controversial matters, including those referred to in Paragraph 7, which have been appealed to the General Manager as a result of the General Superintendent and Regional Chairman not being able to arrive at a common understanding, will, if not disposed of between the General Manager and the General Chairman, be referred by them to the Reviewing Committee for decision, giving: (1) joint statement of agreed-upon facts; (2) position of General Chairman; (3) position of General Manager. Copies of this joint submission will be furnished the General Chairman.

REGULATION—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

17. Questions relating to regulations which are discussed and agreed upon between the General Manager and the General Chairman will be placed in effect at once and be referred by them immediately to the Reviewing Committee for review with a joint statement prepared by the General Manager and the General Chairman stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman.

REVIEWING COMMITTEE.

INTERPRETATIONS—PROMULGATION OF:

18. Interpretations of regulations made by the Reviewing Committee will be promulgated to all interested Railroad Officers. A sufficient number of copies of these interpretations will be furnished the General Chairman for distribution to his Local Chairmen.

MAKE-UP OF REVIEWING COMMITTEE.

19. The Reviewing Committee shall consist, for the management, of two representatives from each Region of the System, and, for the employes, of two representatives from each Region of the System, one of whom shall be the General Chairman.

METHOD TO BE FOLLOWED BY REVIEWING COMMITTEE.

20. In all matters other than discipline the entire Committee will sit.

21. In cases of discipline the representatives of the management in the Region where the case arises, together with the representatives of the employe involved in the Region where the case arises, will not sit on the Committee, but will present the case to the remaining members of the Committee, who will hear and determine the matter at issue.

22. The management and the employes will have equal voting power and not less than a two-thirds vote will be necessary to reach a decision.

23. In case a decision is not reached by the Reviewing Committee not later than the next regular meeting at which the case was first brought up, further procedure will be had as determined upon at the time of such disagreement.

24. The meeting place of the Reviewing Committee will be fixed from time to time by the Committee.

The foregoing becomes effective September 1, 1921, and shall remain in full force and effect until after thirty days' notice has been given by either party to the other of a desire to change.

FOR THE MANAGEMENT:

C. S. KRICK,
General Manager,
Eastern Region.

R. E. MCCARTY,
General Manager,
Central Region.

T. B. HAMILTON,
General Manager,
Northwestern Region.

I. W. GEER,
General Manager,
Southwestern Region.

FOR THE EMPLOYES:

LEO I. KENNEDY,
General Chairman,
U. B. of M. W. E. & R. S. L.

August 23, 1921.

EXHIBIT "P."

(Filed November 14, 1923.)

MEMORANDUM OF UNDERSTANDING COVERING METHOD TO BE FOLLOWED IN THE HANDLING OF QUESTIONS BETWEEN THE PENNSYLVANIA SYSTEM MANAGEMENT AND ITS EMPLOYES COVERED BY THE MAINTENANCE OF WAY REGULATIONS.

PREAMBLE:

1. The outline of the method in which controversial matters are to be handled as given below is for the

purpose of expeditious adjustment of matters presented, to the end that there may be a satisfied spirit among the officers and employes, and it is important, therefore, that, so far as is possible, decisions will be reached at the time of meeting, such decision to be confirmed in writing as promptly thereafter as is possible.

2. This plan for handling regulation and other matters can be successful only by full and conscientious co-operation on the part of both the management and the employes, and it is expected that when questions are presented for disposition that the spirit of absolute fairness will be the factor in adjusting these matters.

Divisional Handling.

Monthly Meetings—Superintendent and Local Chairmen:

3. Each Division Superintendent will hold monthly meetings with the Local Chairman representing the employes covered by the Maintenance of Way Regulations, for the purpose of disposing, if possible, of all controversial matters arising on the Division, and these matters may be placed before the meeting by either the employes or the Superintendent.

4. The Local Chairman will furnish the Superintendent not less than five days in advance of the meeting a list of the questions he desires to discuss, and the Superintendent will likewise advise the Local Chairman not less than five days in advance of the meeting of the questions he desires to have discussed.

Regulations—Method of Handling When There is No Disagreement:

5. Questions relating to regulations which are discussed and agreed upon between the Superintendent

and Local Chairman will be placed in effect at once and referred by them to the Reviewing Committee immediately for review, with a joint statement prepared by the Superintendent and Local Committee stating the case at hand and giving their reasons for such agreement. Copies of this joint submission will be furnished the Local Chairman, the General Superintendent and the General Manager.

REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

6. In cases where the Superintendent and Local Committee are not agreed that the language of a regulation exactly covers the situation at hand, and there having been no interpretation placed on same by the Reviewing Committee, they will at once prepare and refer to the Reviewing Committee for decision a joint submission showing: (1) joint statement of agreed-upon facts; (2) position of Committee; (3) position of Superintendent. Copies will be furnished the Local Chairman, General Superintendent and General Manager.

INTERPRETATION OF REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

7. In cases where the Superintendent and Local Committee are not agreed that an interpretation that has been placed on a regulation by the Reviewing Committee exactly covers the situation at hand, a joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed-upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

DISCIPLINE APPEALS—METHOD OF HANDLING:

8. Discipline matters subject of appeal by the Local Chairman will be handled in accordance with Regulations, or may be handled at the monthly meetings providing the employe involved has complied with the regulations covering the method of appeal from discipline.

9. In the event the Local Chairman is not satisfied with the decision of the Superintendent on a discipline case, a joint statement will at once be prepared by the Superintendent and the Local Chairman showing: (1) joint statement of agreed-upon facts; (2) position of Local Chairman or Committee; (3) position of Superintendent. Copies of this joint submission will be furnished the Superintendent and Local Chairman. If further action is taken on the case it will be with the General Superintendent.

OTHER THAN REGULATION AND DISCIPLINE MATTERS—METHOD OF HANDLING:

10. In addition to regulation and discipline matters, all other controversial questions will be handled at the Superintendent's monthly meeting. In case the Local Chairman or Committee is not satisfied with the Superintendent's decision a joint submission will be made in the form outlined in Paragraph 9.

GENERAL—DIVISIONAL HANDLING.

MONTHLY MEETINGS—GENERAL SUPERINTENDENT AND REGIONAL CHAIRMAN:

11. Each General Superintendent will hold monthly meetings with the Regional Chairman representing the employes covered by the Maintenance of Way Regulations for the purpose of disposing, if possible, of all controversial matters referred to him by the Re-

gional Chairman and upon which the Superintendent and the Local Chairman have been unable to agree. Questions for discussion will be referred to the General Superintendent by the Regional Chairman not less than five days in advance of meeting, and the General Superintendent will likewise furnish the Regional Chairman a list of questions he desires to discuss not less than five days in advance of meeting.

OTHER THAN REGULATION MATTERS—METHOD OF HANDLING:

12. In the event the Regional Chairman is not satisfied with the decision of the General Superintendent on any controversial matters, other than regulation matters, referred to the General Superintendent by the Regional Chairman, such cases will at once be jointly referred by the General Superintendent and the Regional Chairman to the General Manager giving: (1) joint statement of agreed-upon facts; (2) position of Regional Chairman; (3) position of General Superintendent. Copies of this joint submission will be furnished the General Chairman.

REGULATION—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

13. Questions relating to regulation matters which are discussed and agreed upon between the General Superintendent and the Regional Chairman will be placed in effect at once and referred by them to the Reviewing Committee immediately for review with a joint statement prepared by the General Superintendent and Regional Chairman, stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman and the General Manager.

INTERPRETATION OF REGULATIONS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

14. In cases where the General Superintendent and Regional Chairman are not agreed that an interpretation that has been placed on a regulation by the Reviewing Committee exactly covers the situation, a joint statement will at once be prepared by the General Superintendent and the Regional Chairman and referred to the General Manager giving: (1) joint statement of agreed-upon facts; (2) position of Regional Chairman; (3) position of General Superintendent. Copy of this joint submission will be furnished the General Chairman.

REGIONAL HANDLING.

BI-MONTHLY MEETINGS—GENERAL MANAGER AND GENERAL CHAIRMAN:

15. Each General Manager will hold bi-monthly meetings with the General Chairman representing the employes covered by the Maintenance of Way Regulations for the purpose of disposing, if possible, of all questions which have been submitted to him by the General Chairman as a result of disagreeing with decisions of the General Superintendent. The General Chairman will furnish the General Manager not less than five days before meeting a list of subjects to be discussed, and the General Manager will likewise furnish list to the General Chairman, not less than five days before meeting, of questions he desires to discuss.

REGULATION AND OTHER MATTERS—METHOD OF HANDLING WHEN THERE IS DISAGREEMENT:

16. All controversial matters, including those referred to in Paragraph 7, which have been appealed to the General Manager as a result of the General Su-

perintendent and Regional Chairman not being able to arrive at a common understanding, will, if not disposed of between the General Manager and the General Chairman, be referred by them to the Reviewing Committee for decision, giving: (1) joint statement of agreed-upon facts; (2) position of General Chairman; (3) position of General Manager. Copies of this joint submission will be furnished the General Chairman.

REGULATION—METHOD OF HANDLING WHEN THERE IS NO DISAGREEMENT:

17. Questions relating to regulations which are discussed and agreed upon between the General Manager and the General Chairman will be placed in effect at once and be referred by them immediately to the Reviewing Committee for review with a joint statement prepared by the General Manager and the General Chairman stating the case and giving their reasons for such agreement. Copies of this joint submission will be furnished the General Chairman.

REVIEWING COMMITTEE.

INTERPRETATIONS—PROMULGATION OF:

18. Interpretations of regulations made by the Reviewing Committee will be promulgated to all interested Railroad Officers. A sufficient number of copies of these interpretations will be furnished the General Chairman for distribution to his Local Chairmen.

MAKE-UP OF REVIEWING COMMITTEE.

19. The Reviewing Committee shall consist, for the management, of two representatives from each Region of the System, and, for the employes, of two representatives from each Region of the System, one of whom shall be the General Chairman.

METHOD TO BE FOLLOWED BY REVIEWING COMMITTEE.

20. In all matters other than discipline the entire Committee will sit.

21. In cases of discipline the representatives of the management in the Region where the case arises, together with the representatives of the employe involved in the Region where the case arises, will not sit on the Committee, but will present the case to the remaining members of the Committee, who will hear and determine the matter at issue.

22. The management and the employes will have equal voting power and not less than a two-thirds vote will be necessary to reach a decision.

23. In case a decision is not reached by the Reviewing Committee not later than the next regular meeting at which the case was first brought up, further procedure will be had as determined upon at the time of such disagreement.

24. The meeting place of the Reviewing Committee will be fixed from time to time by the Committee.

The foregoing becomes effective September 1, 1921, and shall remain in full force and effect until after thirty days' notice has been given by either party to the other of a desire to change.

FOR THE MANAGEMENT:

C. S. KRICK,
General Manager,
Eastern Region.

R. E. MCCARTY.
General Manager,
Central Region.

T. B. HAMILTON,
General Manager,
Northwestern Region.

I. W. GEER,
General Manager,
Southwestern Region.

FOR THE EMPLOYES:

LEO I. KENNEDY,
General Chairman,
Pennsylvania System
Fraternity.

EXHIBIT "Q."
(Filed November 14, 1923.)

PENNSYLVANIA SYSTEM

GENERAL OFFICE, BROAD STREET STATION, PHILADELPHIA

Eastern Region Headquarters, Philadelphia
Central Region Headquarters, Pittsburgh
Northwestern Region Headquarters, Chicago
Southwestern Region Headquarters, St. Louis

For the Information of the Public:

September 25, 1921.

In reply to the United States Railroad Labor Board's recent order concerning the Pennsylvania Railroad's application to the Board to set aside its decision in the case of the Shop Crafts Union, the Company will file with the Board tomorrow (Monday) a statement of its position, signed by President Samuel Rea.

The most important points submitted by the Company are:

That the Board has refused to grant a hearing at which the Company proposed to give concrete evidence of the fact that the great majority of its employes are satisfied with the manner of selecting employe representatives and with the rules and working conditions now in effect.

That the Board, on the contrary, has restricted tomorrow's hearing to matters over which the Company maintains the Board has no jurisdiction and has declined to hear any other evidence.

That the real issue in this case is the fundamental right of employer and employes to deal directly with each other.

That the Company does not question the jurisdiction of the Board to hear and decide such disputes as fall within the purview of the Transportation Act. It does, however, deny the right of the Board to invade the domain of Management.

The Board refers the Company to its recent decision, in which the Board arrogates to itself the right to ignore the decisions of the Supreme Court of the United States determining the respective rights of employers and employes, and decides that "hitherto unquestioned legal rights" must give way to the Board's view of what is just, fair and reasonable as between the parties and the public.

In reply to this the Company says:

> "The carrier cannot accept these views of the Board, novel and even startling though they may be, and if followed to their logical conclusion revolutionary in effect. It does not believe that the Transportation Act has deprived, or was intended by Congress to deprive, either employers or employes of their constitutional and legal rights as established by the Supreme Court and other courts of the United States."

The Company's reply follows, in full:

THE UNITED STATES RAILROAD LABOR BOARD

Decision No. 218 (Docket No. 404)

Railway Employes' Department, American Federation of Labor (Federated Shop Crafts)

vs.

Pennsylvania System.

REPLY TO THE BOARD'S DECISION OF SEPTEMBER 19, 1921.

To the United States Railroad Labor Board:

The Pennsylvania Railroad Company, hereinafter called the "carrier," replying to the decision of the Board in this cause, issued September 19, 1921, upon the carrier's Application for Vacation of Decision, filed with the Board on August 24, 1921, respectfully submits that the said decision of September 19, 1921, is not responsive to the carrier's said application.

1. The carrier invites the attention of the Board to Sections 5 and 6 of its Application for Vacation of Decision which read as follows:

"5. The carrier states that it has been its policy since the termination of Federal Control, to re-establish with its own employes a contented and harmonious relationship, ever bearing in mind that honest, efficient and economical operation of its lines can be secured only by close and unrestricted co-operation by the management and the employes. With that end in view, it was determined that all classes of employes should have a voice in the administration of matters affecting their welfare through representatives of their own selection and that such representatives, whether union or non-union men, should be actual employes. In pursuance of this policy conferences were held with representatives duly authorized and designated by the employes in the several crafts.

"There are in the service of the carrier at this time approximately 176,000 employes who are interested in and affected by rules covering working conditions, and 117,176, or 66.5%, of said employes have by vote or otherwise, as a result of said conferences, expressed a desire to negotiate rules and working conditions through employe representatives. Accordingly, contracts respecting rules and working conditions have been entered into between the carrier and representatives of 149,918 employes, apportioned among the several classes, as follows:

"Train and engine service employes	41,396
Clerks and other office, station, storehouse, warehouse, and elevator forces, including engine and train crew callers	39,598
Maintenance of Way and Structures and shop laborers	40,209
Mechanics, helpers and apprentices, Maintenance of Equipment and Telegraph and Telephone	24,078
Signal Department Employes	2,061
Marine Department Employes	1,254
Dining Car and Restaurant Employes	1,322
Total	149,918

"Since the decision in this cause, the carrier has held conferences with representatives of the several crafts with whom contracts have been made for the purpose of ascertaining whether or not in the light of the said decision, said employes were satisfied with the manner of selecting representatives and with the rules and working conditions actually agreed to; and as a result of said conferences, the said employes through their representatives manifested their satisfaction not only with the manner of selecting representatives but also with the rules and working conditions embodied in the said agreements.

"On August 22, 1921, a general conference was held with representatives of employes who had been selected by ballot in accordance with the plan of election submitted by the carrier after the publication of the Board's Decision No. 119. To this conference at least 250 representatives of System Federation 90 of the American Federation of Labor, employed by the carrier, were invited, but, acting under the instructions of the President of System Federation 90, but few of such representatives attended the conference.

"In this connection it may be stated that many of said employe representatives are union men, and in the case of several crafts the entire delegation of elected representatives consists of union men. At this conference the employe representatives again signified their approval of and their satisfaction with the plans and purposes of the management and the contracts which had been duly executed."

In its said application the carrier requested the Board to grant an oral hearing for the purpose of introducing evidence in support of the allegations of fact contained in the said two sections; and it was the earnest hope of the carrier that the Board would take cognizance of the new and changed conditions set forth in the said application, and by its co-operation, counsel and advice would assist the carrier in its

announced policy of endeavoring to re-establish with its employes a contented and harmonious relationship, based upon honest, efficient and economical railroad operation, which can be secured only by close and unrestricted co-operation by and between the management and its own employes.

2. The carrier, however, further invites the attention of the Board to the fact that in its decision of September 19, 1921, the Board limited the carrier in its introduction of oral testimony to the following matters:

1. The question as to what employes, if any, not in the actual and active service of the carrier, such as men laid off, furloughed or absent upon leave, shall be permitted to vote in the election of representatives to negotiate agreements on rules and working conditions.
2. The question of how the representative capacity of the spokesmen of unorganized employes shall be ascertained.
3. The carrier will be permitted to offer such evidence, as it may see fit, of the adoption or ratification of its shop craft rules by the representatives of said crafts fairly selected by a majority of the employes of that class.

In this decision the Board declined to grant a hearing upon all other questions raised in the carrier's said application.

It is, of course, clear that Paragraphs 1 and 2 of the decision pre-suppose that the election prescribed by the Board in Decision No. 218, with all of its objectionable forms and conditions, will be held. The carrier in Section 4 of its said Application for Vacation of Decision denied the power of the Board to prescribe an election, or any other method, by which the carrier

may desire to ascertain who are the authorized representatives of its employes; and the carrier hereby reaffirms its denial of any such power or authority in the Board, and can not acknowledge or submit itself to the jurisdiction of the Board by the submission of any testimony relative to the subject matter of Paragraphs 1 and 2 of the said decision.

3. As to the Paragraph 3 of the said decision, the carrier again invites the attention of the Board to Section 5 of its said Application for Vacation of Decision, and particularly to the averment that contracts respecting working rules and conditions have been entered into between the carrier and the representatives of approximately 150,000 of its employes; and the carrier again denies the right or the power of the Board to set aside and hold for naught the said contracts without a hearing upon the justness and reasonableness thereof.

It is apparent that in this paragraph also the Board has in mind the election by it prescribed, with a ballot having printed thereon the appellations "System Federation No. 90, Railway Employes' Department of the A. F. of L." and "American Federation of Railroad Workers," a ballot avowedly in accordance with the established method of taking a ballot among the railway labor organizations.

Therefore, the carrier does not desire to offer any evidence on the subject matter of Paragraph 3 of the said decision, which relates to mere procedure and which is not within the jurisdiction of the Board.

4. The carrier reminds the Board that in its prayer in the said application contained it asked the Board to find in pursuance of the Transportation Act (a) that the carrier has the lawful right to establish rules and working conditions in the first instance,

either with or without first holding conferences with its employes; and (b) that the contracts respecting rules and working conditions heretofore entered into by the carrier and its employes in the shop crafts are now in full force and effect without any further action on the part of the carrier and its employes in the said shop crafts. The Board has refused to grant a hearing and to make such finding, and has in all respects declined to hear the carrier upon the issue of law and fact presented in its application. It follows, therefore, that there is nothing for the carrier to present in the way of oral evidence on the day fixed by the Board, to wit, September 26, 1921.

5. The carrier notes that it is referred by the Board to its decision 224 (Docket 426) in which the Board arrogates to itself the right to ignore the decisions of the Supreme Court of the United States determining the respective rights of employers and employes, and decides that "hitherto unquestioned legal rights" must give way to the Board's views of what is just, fair and reasonable as between the parties and the public.

"The carrier cannot accept these views of the Board, novel and even startling though they may be, and if followed to their logical conclusion revolutionary in effect. It does not believe that the Transportation Act has deprived, or was intended by Congress to deprive, either employers or employes of their constitutional and legal rights as established by the Supreme Court and other courts of the United States."

The carrier, therefore, reaffirms the conclusions of law and the statement of facts set forth in its said Application for Vacation of Decision.

6. The carrier states finally that it has not denied and is now not denying the jurisdiction of the Labor

Board to hear and decide such disputes as fall within the purview of the Transportation Act, but it denies the right of the Board to invade the domain of management and to assert jurisdiction over grievances of whatsoever kind and character in connection with the employment, the discipline and the discharge of its employes.

The carrier also asserts and will exercise its right to deal with its own employes without the intervention of individuals or organizations whose manifest object is the denial of the fundamental right of employer and employes to deal in the first instance directly with each other respecting wages and working conditions in which they alone are directly interested.

Respectfully submitted,

(Signed) SAMUEL REA,
President, the Pennsylvania
Railroad Company.

PHILADELPHIA, PA., SEPTEMBER 23, 1921.

EXHIBIT "Y."
(Filed November 27, 1923.)

SPEAKING FOR 80,000.

ADDRESSES MADE AT CONFERENCE BETWEEN THE OFFICERS OF THE PENNSYLVANIA RAILROAD AND REPRESENTATIVES OF THE EMPLOYES, AT THE RAILROAD Y. M. C. A., WEST PHILADELPHIA, AUGUST 22, 1921.

At the Opening of the Conference,
Vice-President W. W. Atterbury said:

I have asked our officers if they would please bring together this afternoon, if possible, the chairmen of

the various divisions or points of the shop crafts represented by System Federation No. 90. I also asked them to have here today, if possible, the corresponding representatives from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

In addition I also asked to have here the representatives of the employes in the shops and on the road representing the clerical forces and station forces, who have been elected by what you men know as the company ballot.

I want to say to you gentlemen I thank you very kindly from the bottom of my heart for coming here. I am much obliged to you.

The balance have heard me say before what I want to say to you gentlemen, and perhaps therefore, you will excuse me if I say it again.

When the railroads were handed back to the Management we found the National Agreements. Did any of you men have anything to do with it? No? Is that democratic? Is that self-government? Is that anything that you as American citizens can well be proud of? I want to say to you without question that the rank and file of the railroad employes of this country, and particularly the rank and file of the Pennsylvania Railroad employes, are a fine body of men; as fine a body of men as there is in the country, and yet we gave up our birthright.

Trying to Get Back to the Men
What Belongs to Them

That was the thing that really started me in my endeavor to get back to you men what naturally and properly belongs to you. If you will remember a year ago last April, prior to the hearings before the Labor Board, System Federation No. 90, in order to get a

case before the Labor Board, presented to our officers the National Agreement and asked that they either assent to its acceptation or refuse to accept it.

Our officers desired to discuss with them that agreement. The chairman and the committee of System Federation No. 90 said that they had no authority to cross a "t" or dot an "i," or make any change.

Later, following the Decision 119 of the Labor Board, the information that we received was that System Federation 90 would have nothing to do with any change in the agreement in consultation with our officers, and that they practically would get the case back to the Labor Board for the decision of the National Agreement. That action was verified because of the attitude taken by the American Federation of Labor representatives on the other roads, and almost all the other roads in this country are today back to the hands of the Labor Board to write an agreement for the employes on all the railroads.

I asked you gentlemen to rise because I still wanted the confirmation of the information that I had that though we invited all of the representatives that we could get hold of, of System Federation No. 90, by the advice of their officers they were not to attend this meeting. I am sincerely sorry that they are not here because after all they are employes just as we are—employes of the Pennsylvania System and interested in keeping the family together.

80,000 Employes Represented At Meeting

There are represented in this room, then, the representatives of about 80,000 of our employes, who have been elected by the company ballot. There are represented here, I take it, by the Brotherhood of Railway

and Steamship Clerks, etc., about 15,000 men who have not participated in the election. About 25,000 men of the shop crafts have not voted the company ballot. Therefore, we have present here the representatives of 80,000 men on one side, and I think a few representatives of the System Federation No. 90, and the representatives of the clerical forces, another 40,000 who did not vote the company ballot.

Now with those 80,000 men we have made agreements. We believed and still believe that the ballot was a fair and equitable one. We went ahead and in a thoroughly democratic way took the vote. For the men who didn't vote, I can only say I am very sorry for them because they could have elected solid union representatives if they had voted the ballot and had enough votes.

The Maintenance of Way forces who are here elected a solid union committee; the Signalmen who are also represented here, elected a solid union committee. The ballot as it was proposed was developed in conference with the representatives of the Maintenance of Way Department and Signal Department, and so far as I know, neither the Maintenance of Way nor the Signal Departments, the committee of each of which is a solid union committee, has any criticism to make either of the ballot itself, or of the details of the agreement that was subsequently entered into.

Management Will Stand
By Agreements

Now I want to express myself to the few clerical forces who did not vote the company ballot. Your case has been before the Labor Board and the railroad was decided against, but in the meantime we have made an agreement with 35,000 of our clerical and station forces on the railroad. Are we going back on those 35,000 men? No we are not.

We made the agreement and we are going to stand by it. Now you men, if you don't like that agreement, if the details of it aren't fair, can carry that agreement to the Labor Board for criticism on anything. That you have the right to do under the Transportation Act. Or you can withhold action until the next election, which should be next Spring, and then if you are not satisfied with the representatives who represent you in the clerical forces and the shop forces, you can put in whom you please so long as they are employes and are employes on the divisions upon which you work. If you want to elect other than the present committee you can do so.

Now what other course have you? You have the course of the strike! Is that worth while? What do you gain by it? Gain any more money? Working conditions? What are you going to accomplish by that act? It seems to me that your course is clearly to go along with the 80,000 who are men just the same as you are; just as honest and have just as much at stake. If you can do that then our family will not be a broken family.

You may not agree with me that the ballot was a fair one. You may agree with the Labor Board, but are you willing to try it for the balance of the year and see where we come out? I will guarantee to you a fair ballot; if you want to put the name of the man and put him on as belonging to some organization, I do not object. The Signalmen did that. That is why they elected this great Signal Committee. What I want is committees of the employes, and the orders to come from the bottom and not put on top by some people we know nothing about.

Progress of Joint Reviewing Committees

We will be better off by far if we have our agreements and negotiations between ourselves,—then we

understand them. If we are working with our division people, our own employes and our employes' committees, we understand them. The trainmen have organized Joint Boards of Adjustment, or the Joint Reviewing Committee. Those Joint Reviewing Committees are now in process of formation for the various shops, the clerical forces, the Maintenance of Way forces, and the Signal forces, and any man can get justice by coming up through the division, up to the final Reviewing Board.

On those Reviewing Boards are representatives of the Railroad and representatives of the employes, and every man can have his own personal grievances righted very punctually. The trouble with grievances in the past has been that there was no systematized channel for bringing them to the officers' attention. I take it now with the organization of divisional and general divisional committees and General Manager's committees, and finally the Joint Reviewing Board, that the question is pretty definitely settled.

As I have said, we have representatives with us who were elected by the employes. I am going to ask some of the representatives that have been elected by the employes to talk to you men of the clerical forces who are not in sympathy with our movement.

Closing Remarks of
Vice-President Atterbury

I want to thank the representatives of the Brotherhood of Railway and Steamship Clerks for their attendance at this meeting. I am sorry that System Federation No. 90 was not equally courageous.

I ask you, Mr. Briceland, and the members of that organization who are here, what you would do if you were in my place. Would you go back on the 80,000 men that have voted? No, you wouldn't. You would

do exactly what I am going to do, and stand by those men.

Now I ask you when we adjourn, and this is the last speech, if you, Mr. Briceland, and your committee won't go back and think over your course—see if it isn't wise and prudent and family-like to go along with the 80,000.

As to the representatives of the 80,000, I can't tell you how much I appreciate your being here, because it has given us the more courage to go along the line which we believe to be right, and for your good. I thank you.

EXHIBIT "Z."

(Filed November 16, 1923.)

THE PENNSYLVANIA SYSTEM CLERKS' ASSOCIATION OF THE OPERATING DEPARTMENT EASTERN REGION

INSTRUCTIONS PROMULGATED BY THE REGIONAL JOINT COMMITTEE CLERICAL EMPLOYES GENERAL ELECTIONS MAY, 1922

ELECTION BALLOT

Form of.—See copy of "Election Ballot," page 12.

How to be distributed.—Through heads of the various departments.

Number of names to be placed on ballots.—All duly nominated on each Division or in each General Superintendent's Department.

Shall the employe's receipt be taken for the ballot, and how? Yes, in writing on election rolls as per sample, page 13. A record will be made on the Election Roll of any ballots not delivered.

General.—The election ballot will be accompanied by all necessary envelopes and will contain instructions for marking same and forwarding to the Regional Joint Committee, Clerical Employes. The necessary envelopes and ballot will be furnished the employes in a sealed envelope. Sample forms of envelopes are shown on page 14. Blank election rolls will be furnished to the heads of the Departments at the same time as the ballots, and the employes' receipts for ballots must be taken thereon.

Ballots must be in the hands of employes on or before Wednesday, May 10, 1922.

THE PENNSYLVANIA SYSTEM CLERKS' ASSOCIATION
OF THE
OPERATING DEPARTMENT—EASTERN REGION

ELECTION ROLL

.....Division.

We, the undersigned members of this Association, have received the sealed envelope containing ballot and necessary envelopes with instructions for use in balloting at the annual election to be held May 15, 1922:

Name	*Occupation*	*Location*	*Date*
.....			
.....			
.....			

EXHIBIT "AA."

(Copy)

THE PENNSYLVANIA SYSTEM MISCELLANEOUS FORCES' ASSOCIATION OPERATING DEPARTMENT—
EASTERN REGION
Room 137
Penna. Station, New York

J. R. Rudolph, General Chairman, P. T. Division
A. L. Maugans, General Chairman, Eastern Penna. Div.
W. T. Corcoran, General Chairman, Central Penn Division
J. A. McLaughlin, General Chairman, Southern Gen. Div.

March 24, 1922

PROPOSED WAGE REDUCTION

Gentlemen:—

Supplementing my letter to Chairmen dated March 23rd:

Please arrange to attend meeting at Hanover Hotel, 12th and Arch Streets, Philadelphia, Pa., 2.00 P. M., Monday, April 3rd, 1922, with your full Committee.

The purpose of this meeting is to discuss the proposed wage decrease as originally outlined by the General Manager under date of November 15th, 1921, (copy of letter follows):

Philadelphia, Pa., March 20, 1922

Mr. C. B. Althouse, Regional Chairman,
Penna. System Miscellaneous Forces' Assn.,
137 Pennsylvania Station, New York, N. Y.

Dear Sir:—

Referring to our letter of November 15, 1921, in which the Management advised of their desire to make reduction in the rates of pay of the employes whom you represent:

You are hereby advised that we are now ready to discuss this matter with you and your Committee. We shall be glad, therefore, if you will arrange to attend a meeting for this purpose to be held in Room 53, Broad Street Station, Philadelphia, on Tuesday, April 4, 1922, beginning at 10:00 a. m.

Please acknowledge receipt.

Very truly yours,

C. S. KRICK,
General Manager

Accommodations, including the use of assembly room, have been secured and arranged for at the above mentioned hotel for the entire Committee by Mr. J. R. Rudoph, Vice Regional Chairman. While divisional details have been furnished by the Division Chairmen in previous correspondence, we are now arriving at the psychological moment and it is up to you to come fully prepared, if possible, with the consensus of opinion of your various local divisions. The meeting with myself and my Committee with the Management has been arranged for at 10:00 a. m. the following morning, Tuesday, April 4th, at Room 53, Broad Street Station, Philadelphia, and this preliminary caucus as above outlined, is to give all you Chairmen and Committeemen representing the various Divisions an opportunity of advising your sentiments as to the proper procedure which will meet with the greatest success in holding on to what we have.

Owing to the question at issue being of such vital importance insofar as affecting the future welfare of the employes we represent and having our own character and integrity as elected representatives at stake on this momentous occasion, I have decided that in all fairness to the employes who elected us, that our full Committee should be present. Therefore instruct

your Division Chairmen to notify your Committeemen accordingly, as above outlined.

This will give all parties interested an opportunity to arrange for leave of absence to cover this period and secure transportation, if necessary.

Yours truly,

C. B. ALTHOUSE,
Regional Chairman, Miscellaneous Forces.

EXHIBIT "CC."
(Filed November 14, 1923.)

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
SYSTEM BOARD OF ADJUSTMENT
PENNSYLVANIA SYSTEM
409 Appollo Building, Pittsburgh, Pa.,
April 19, 1922.

TO ALL OFFICERS AND MEMBERS LOCAL LODGES
PENNSYLVANIA SYSTEM.

Greetings:

We are receiving a good many inquiries as to the status of the Pennsylvania injunction case vs. the United States Railroad Labor Board, and have to advise that Judge Page, before whom hearing was heard, has not, as yet, handed down his decision. Just as soon as decision is rendered our Grand President will wire the undersigned and we, in turn, will immediately advise all Local Lodges. We appreciate fully the anxiety of our Membership in this respect and are very desirious of giving them information just as soon as decision is given. You can rest assured then that the non-receipt of any information as to this case means that decision has not been rendered.

I have before me instructions apparently promulgated by the so-called Company Committee relative to the nomination and election of so-called employe representatives, said election, as we understand it, to be held on May 15, 1922, and providing for at least the election of one Committeeman from each Superintendent's Division, nomination for said election to be made on or before May 1st, 1922. We are receiving various inquiries as to what position we intend to take in this matter and would say while we fully appreciate the inclination of some of our Members to use this ballot in an effort to elect Members of our Organization, yet we believe, upon second thought, our Members will agree with us that it would be ill advised to make any use whatsoever of the ballot. In view of the Decisions of the United States Railroad Labor Board, it appears to us that we are complying with the Laws of our land in keeping out of this matter entirely and not becoming a party to any violation of the Law. We feel that to take any part in the nomination or election would not only show a spirit of compromise on our part, but, at the same time, would repudiate all our contentions as in the past. Throughout this whole controversy we have kept our hands entirely clean and believe that by continuing to so do we will be best serving the interests of our Membership.

We have, however, referred this matter to our Grand President, asking him if he has any suggestions to make, and upon receipt of information from him you will be advised further.

With best wishes, I am,

Sincerely and fraternally yours,

C. R. BRICELAND,
General Chairman.

EXHIBIT "DD."
(Filed November 14, 1923.)

(Copy)

Harrisburg, Pa., May 8th, 1922.

Mr. Jos. Brown:—

We are forwarding you to-day, under separate cover, supply of sealed envelopes containing ballot, and necessary envelopes with instructions for use in the balloting for clerks and Miscellaneous Force Representatives. Each clerk should be furnished with a Clerk's Ballot and each Miscellaneous Employe should be furnished with a Miscellaneous Employe's Ballot, on or before Wednesday, May 10th, 1922.

We are also forwarding you election rolls, on which each employe receiving ballot should receipt for same. A record should be kept of all employes who you are unable to furnish ballots on account of sickness, etc.; also separate record of employes refusing to receive ballots.

Ballots are to be mailed by the clerical employes to the Regional Joint Committee, Clerical Employes, Room 59, Broad Street Station, Philadelphia, Pa., on or before 11.59 P. M., Eastern Standard Time, Monday, May 15th, 1922.

Ballots are to be mailed by the Miscellaneous Employes to the Regional Joint Committee, Miscellaneous Association, Room 53, Broad Street Station, Philadelphia, Pa., on or before 11.59 P. M., Eastern Standard Time, Monday, May 15th, 1922.

All receipts for ballots and records of employes who you are unable to furnish ballots on account of sickness, etc.; and record of employes refusing to receive ballots, to be mailed so as to reach this office not later than Thursday, May 11th.

E. J. CLEAVE,
Superintendent.

EXHIBIT "HH."
(Filed November 27, 1923.)

Published by the Standard Railroad of the World

For the Information of the Public and Employes

THE
PENNSYLVANIA STANDARD

Volume 1 September 22, 1921 Number 8

JOINT REVIEWING COMMITTEES FORMED BY 120,000 EMPLOYES AND P. R. R. MANAGEMENT.

MANAGEMENT AND EMPLOYES HAVE EQUAL VOICE IN DECIDING CONTROVERSIES.

Committees consisting of equal representation of the employes and of the management have now been established on the Pennsylvania Railroad for the settlement of all controversial questions affecting approximately 120,000 employes.

A new basis of understanding between the management and these employes is now in effect. On their part the employes recognize that all differences should be and are capable of amicable settlement. On the part of the management effectual recognition is given to the right of the employes to have a voice on equal terms with the management in matters affecting their welfare and working conditions.

TRAIN AND ENGINE SERVICE PLAN.

With the Train and Engine Service employes, this arrangement, embodied in the Joint Reviewing Committee, has been in effect since January 1st of this

year. A method of amicable adjustment similar to this Joint Reviewing Committee has been worked out by the representatives of the management and the representatives of other classes of employes.

The groups included in the new arrangements are:

Train and Engine Service.
Maintenance of Way and Structures.
Signal Department.
Mechanics' helpers and apprentices, Maintenance of Equipment and Telegraph and Telephone, Eastern Region.
Clerical Forces, Eastern Region.
Miscellaneous Station Forces, Eastern Region.

For each of the first three groups, a System Reviewing Committee, constituting a court of review upon all questions that may arise between the management and the employes affected, is now in effect. For the three other groups a Regional Reviewing Committee has been established.

The questions to be taken up by these committees include grievances, rules and working conditions, and the administration of discipline. The votes of all members, whether representatives of the management or of the employes, are of equal power. Not less than two-thirds vote is necessary to reach a decision upon any question presented.

Discipline Cases Handled.

In all matters except individual discipline cases, the full committee will vote and its decisions will constitute precedents which will be binding equally upon both sides with respect to similar existing or future cases. In discipline cases, which involve a personal element, the representatives of the management and

the representatives of the employe directly interested in the case merely act as counsel for the presentation of their respective claims, and do not vote on the case.

A method of appeal to the Division Superintendent, General Superintendent and General Manager is provided so that all cases which cannot be settled on the Division may receive expeditious attention by the Reviewing Committee. Regular meeting dates are fixed for the Division Superintendents, the General Superintendents and the General Managers, to meet representatives of the employes under their jurisdiction, and appeals may be taken in this order, the employes participating in every step in decisions affecting their interest.

The formation of these committees carries out the policy announced on May 20th, 1921, of giving all employes an opportunity to have a voice in the management in matters affecting their welfare. Following this announcement elections were held throughout the System to determine the employes' choice of representation to formulate new rules and working conditions to take the place of the National Agreements.

It was announced at that time that it was the hope of the management that these employe representatives would form the nucleus of committees which should frequently confer with the management on all matters concerning the employes. Accordingly, as soon as the new rules were agreed upon, the employe representatives and the management held a series of conferences which resulted in the formation of these committees.

The System Reviewing Committee for the employes on Maintenance of Way and Structures is composed of eight representatives of the management and eight representatives of the employes, two from each region.

The System Reviewing Committee for the Signal Department employes is made up in the same way.

REGIONAL COMMITTEES FORMED.

The Regional Joint Committee for the Shop Craft employes of the Eastern Region is composed of seven representatives of the management and seven representatives of the employes. The Regional Joint Committee for the clerical forces in the Eastern Region is composed of six representatives of the management and six representatives of the employes.

The Regional Joint Committee for the miscellaneous station forces in the Eastern Region is composed of five representatives of the management and five representatives of the employes.

The Chairmanship of each of the committees alternates each year between a representative of the management and a representative of employes.

MEMBERS OF REVIEWING COMMITTEES.

JOINT REVIEWING COMMITTEE—TRAIN AND ENGINE SERVICE.

REPRESENTING MANAGEMENT:

H. K. Brady, Supt. Labor and Wage Bureau, Cen. Reg. *Vice-Chairman.*

R. V. Massey, Asst. Gen. Mgr., E. Reg.

H. A. Enochs, Supt., Wage Bureau, E. Reg.

A. J. Whitney, Gen. Supt., Nor. Div., Cen. Reg.

E. B. Dithridge, Asst. to Gen. Mgr., S. W. Reg.

W. C. Downing, Gen. Supt., Indiana Division, S. W. Reg.

W. M. Wardrop, Gen. Supt., Mich. Div., N. W. Reg.

W. W. Burrell, Supt. Labor & Wage Bureau, N. W. Reg.

REPRESENTING EMPLOYES:

H. R. Karns, Gen. Chairman, B. of L. E.—Lines West, *Chairman.*

William Park, Gen. Chairman, B. of L. E.—Lines East.
Elmer G. Boling, Gen. Chairman, B. of L. E.—Lines West.
S. C. Cowen, Gen. Chairman, O. R. C.—Lines East.
W. T. Saul, Gen. Chairman, O. R. C.—Lines West.
H. E. Core, Gen. Chairman, B. of L. F. & E.—Lines East.
D. D. Miller, Gen. Chairman, B. of L. F. & E.—Lines West.
R. A. Knoff, Gen. Chairman, B. of R. T.—Lines West.
C. E. Musser, Gen. Chairman, B. of R. T.—Lines East.

REGIONAL JOINT COMMITTEE—SHOP CRAFT EMPLOYES (EASTERN REGION).

REPRESENTING MANAGEMENT:

R. V. Massey, Asst. Gen. Mgr., *Chairman.*
H. A. Enochs, Supt., Wage Bureau.
A. B. Clark, Supt., Trenton Div.
J. M. Henry, Gen. Supt., Motive Power.
J. O. Hackenberg, Supt., Schuylkill Div.
A. C. Davis, Supt., M. P., So. Div.
F. W. Smith, Spec. Agent, Eastern Pa. Div.

REPRESENTING EMPLOYES:

T. H. Davis, Boilermaker, Atlantic Div., *Vice-Chairman.*
W. Donahue, Blacksmith, Renovo Div.
E. C. Arnold, Sht. Met. Wrkr., P. T. Div.
E. R. Snyder, Carman, Phila. Div.
I. R. Staats, Elec. Wrkr., P. T. Div.
J. J. McBride, Machinist, Phila. Div.
H. H. Emberger, Boilermaker, P. T. Div.

REGIONAL JOINT COMMITTEE—CLERICAL EMPLOYES
(EASTERN REGION.)

REPRESENTING MANAGEMENT:

R. V. Massey, Asst. Gen. Mgr., *Chairman.*
H. M. Carson, Gen. Supt., Cen. Pa. Div.
H. A. Enochs, Supt., Wage Bureau.
A. B. Clark, Supt., Trenton Div.
F. W. B. Humes, Supt., Stations and Transfers.
F. W. Smith, Spec. Agent, Eastern Pa. Div.

REPRESENTING EMPLOYES:

F. J. Garren, New York Div., *Vice-Chairman.*
Oscar Howe, Clerk, Phila. Div.
J. A. McLaughlin, Clerk, Maryland Div.
M. T. Miller, Clerk, Elmira Div.
P. J. Cunningham, Clerk, P. T. Div.
E. A. Kidney, Clerk, Pa. Sta., N. Y. C.
(Representing Gen. Supts. Depts., Eastern Region.)

REGIONAL JOINT COMMITTEE—MISCELLANEOUS FORCES
(EASTERN REGION.)

REPRESENTING MANAGEMENT:

R. V. Massey, Asst. Gen. Mgr., *Chairman.*
H. M. Carson, Gen. Supt., Cen. Pa. Div.
H. A. Enochs, Supt., Wage Bureau.
F. W. B. Humes, Supt., Stations and Transfers.
F. W. Smith, Spec. Agent, Eastern Pa. Div.

REPRESENTING EMPLOYES:

C. B. Althouse, Ticket Clerk, Pa. Sta., N. Y. C.
Vice-Chairman.
A. L. Maugans, Stockman, Phila. Div.
J. A. McLaughlin, Clerk, Md. Div.
W. T. Corcoran, Scale Agent, Sunbury Div.
J. R. Rudolph, Clerk, P. T. Div.

PENNSYLVANIA SYSTEM TELEGRAPH AND SIGNAL DEPARTMENT REVIEWING COMMITTEE.

REPRESENTING MANAGEMENT:

W. M. Post, Supt., T. & S., Cen. Reg., *Chairman.*
W. G. Coughlin, Chief Engnr., M. W., E. Reg.
W. N. Spangler, Asst. Supt., T. & S., E. Reg.
W. D. Wiggins, Chief Engnr., M. W., Cen. Reg.
T. J. Skillman, Chief Engnr., M. W., N. W. Reg.
C. W. Hixson, Supt., T. & S., N. W. Reg.
F. J. Stimson, Chief Engnr., M. W., S. W. Reg.
E. B. Pry, Supt., T. & S., S. W. Reg.

REPRESENTING EMPLOYES:

G. C. Malmsjo, Maintainer, P. T. Div., E. Reg., *Vice-Chairman.*
W. R. Cage, Maintainer, Balt. Div., E. Reg.
J. L. Harkness, Signalman, Pbgh. Div., Cen. Reg.
G. A. Laser, Signalman, Eastern Div., Cen. Reg.
W. L. Dye, Gang Foreman, St. Louis Div., S. W. Reg.
W. B. McNary, Foreman, Columbus Div., S. W. Reg.
H. E. Bopp, Signalman, Logansport Div. N. W. Reg.
John Gildea, Signalman, Chicago T. Div., N. W. Reg.

PENNSYLVANIA SYSTEM MAINTENANCE OF WAY REVIEWING COMMITTEE.

REPRESENTING MANAGEMENT:

W. D. Wiggins, Chief Engnr., M. W., Cen. Reg., *Chairman.*
W. G. Coughlin, Chief Engnr., M. W., Eastern Reg.
W. N. Spangler, Asst. Supt., T. & S., East. Reg.
W. M. Post, Supt., T. & S., Central Reg.
T. J. Skillman, Chief Engnr., M. W., N. W. Reg.
C. W. Hixson, Supt., T. & S., N. W. Reg.
F. J. Stimson, Chief Engnr., M. W., S. W. Reg.
E. B. Pry, Supt., T. & S., S. W. Reg.

REPRESENTING EMPLOYES:

L. I. Kennedy, Carpenter Frmn., Md. Div., E. Reg., *Vice-Chairman.*
Wm. C. Weaver, Sr., Trk. Frmn., Del. Div., E. Reg.
N. L. Haught, Trk. Frmn., C. & P. Div., Cen. Reg.
C. L. Hawkins, Bridge Insptr., E. & A. Div., Cen. Reg.
Cloid V. Frish, Trk. Frmn., Fort Wayne Div., N. W. Reg.
J. F. Owens, Carpenter Frmn., Chi. T. Div., N. W. Reg.
Wm. Owens, Trk. Frmn. Col. Div., S. W. Region.
C. A. Riegel, Carpenter Frmn., Rich. Div., S. W. Reg.

EXHIBIT "II."

(Filed November 16, 1923.)

THE CLERKS' ASSOCIATION
OF THE
OPERATING DEPARTMENT
PENNSYLVANIA RAILROAD SYSTEM
EASTERN REGION.

INSTRUCTIONS PROMULGATED BY THE
REGIONAL JOINT COMMITTEE
CLERICAL EMPLOYES
GENERAL ELECTION
MAY, 1923.

ELECTION BALLOT.

Form of.—See copy of "Election Ballot," page 12.

How to be distributed.—Through heads of the various departments in conjunction with Local Committeemen.

Number of names to be placed on ballots.—All duly nominated on each Division or in each General Superintendent's Department.

Shall the employe's receipt be taken for the ballot, and how?—Yes, in writing on Poll List—Election Roll as per sample, page 13.

Blank Poll List.—Election Roll will be furnished to each Superintendent and General Superintendent not later than Saturday, April 21, 1923. Each Superintendent and General Superintendent, in conjunction with his respective Local Committee, shall have the first three columns on the Poll List—Election Roll filled out with the names (in alphabetical order), occupation and location of all those who are eligible to take part in this election by departments.

Poll List.—Election Roll, upon completion, shall be used by the heads of Departments for the purpose of taking employes' receipts for ballots thereon. Each voter when presented with a ballot will place his signature and date ballot is received opposite his name. A record will be made on the Poll List.—Election Roll of any ballots not delivered.

Method of voting.—Letter ballot by U. S. Mail.

Time Limit.—Ballots must be mailed to the Regional Joint Committee, Clerical Employes, on or before 11.59 p.m., Eastern Standard Time, Monday, May 21, 1923.

General.—The election ballot will be accompanied by all necessary envelopes and will contain instructions for marking same and forwarding to the Regional Joint Committee, Clerical Employes. The necessary envelopes and ballot will be furnished the employes in a sealed envelope. Sample forms of envelopes are shown on page 14.

Ballots must be in the hands of employes on or before Wednesday, May 16, 1923.

After the balloting is closed at 11.59 p. m., Eastern Standard Time, Monday, May 21, 1923, the Poll List—Election Roll must be forwarded to the Regional Joint Committee, Clerical Employes, Room 53, Broad Street Station, Philadelphia, Pa.

THE CLERKS' ASSOCIATION OF THE OPERATING DEPARTMENT PENNSYLVANIA RAILROAD SYSTEM—EASTERN REGION.

POLL LIST—ELECTION ROLL.

.....Division.

We, the undersigned have received the sealed envelope containing ballot and necessary envelopes with instructions for use in balloting at the annual election to be held May 21, 1923:

NAME	OCCUPATION	LOCATION	SIGNATURE	DATE
.....				
.....				
.....				
.....				

EXHIBIT "JJ."
(Filed November 27, 1923.)

PENNSYLVANIA RAILROAD SYSTEM
MISCELLANEOUS FORCES ASSOCIATION.

OPERATING DEPARTMENT — EASTERN REGION

BULLETIN.

Vol. I — April 9, 1923 — No. 2

LEADERSHIP.

The success or failure of any organization is determined by the quality of *Leadership*. We are firm

in our belief that leaders of organizations who promote or approve scandalous or libelous attacks on Railroads, their Managements and their policies are heading not only themselves, but the members of their organizations, to failure and disaster.

Our Association is a branch of the democratic Pennsylvania Railroad System plan of employe representation. The leadership is provided by the employes from among their number. The policy of our leadership is to promote mutual confidence, sympathetic understanding and real co-operation between ourselves and the Management of the Company we serve, rather than stir up hatred and distrust among our fellow employes against the Management of our Company.

Contrary to some opinions, our leadership is subservient to the employes we represent, being responsible to the Management only in keeping inviolate our contracts made in good faith and in the promotion of such acts of co-operation that will be of mutual benefit. What has been accomplished under leadership of this kind and who has reaped the majority of the benefits?

Direct, frank and friendly relations with the Management have been established, bringing about unquestioned mutual confidence, sympathetic understanding and a return of the spirit of loyalty and co-operation so common among Pennsylvania Railroad employes in pre-war times. A set of rules and regulations governing working conditions have been negotiated that give to each and every employe we represent reasonable opportunity for promotion, seniority, an eight-hour day, pro-rata and punitive overtime, one day's rest in seven and seven specified holidays annually, preservation of rates of pay, and assurance of a fair and square deal in all cases where the indi-

vidual considers an injustice has been done him, or in matters affecting our forces collectively.

Annual vacations of twelve working days for some classes of employes and six days for others and sick leave privilege based on the merit of the individual case are the principal concessions granted us. Under our By-Laws, rules of procedure for the adjustment of controversial matters with efficiency and dispatch are set up. We have set monthly meetings with Division and General Superintendents and the General Manager; also a Joint Reviewing Committee has been established.

We want no one to get an impression from the foregoing that we do not have controversial matters arising with the Management, as we do, but our record of having settled the majority of cases of discipline, rates of pay, seniority standing and questions concerning interpretation and application of our rules and regulations in favor of the employes, speaks for itself. It might be well to mention the fact that we have no decisions handed us on silver platters, all decisions being based on cold facts and figures.

Can our present good and welfare be protected by leadership better than this? We don't believe so, and its permanent success is dependent on our continued honesty and fairness with the Management of our Company. Won't you do your part to help by conscientious endeavor to support our Regulations and By-Laws and co-operate with your immediate superior to give our Management and the *Public* better service.

Issued now and then by Publicity Committee,
Room 702, Pennsylvania Station, New York City.

Chairman—E. A. FOARD *Secretary*—H. A. SNOWDEN
Vice-Chairman— A. L. MAUGANS

REGIONAL COMMITTEE MISCELLANEOUS FORCES

ASSOCIATION

OFFICERS.

Chairman—E. H. MALICK,
Lewisson Building, Milton, Pa.

Vice-Chairman—G. M. HILL,
Committee Room, Market St. Ferry, Philadelphia, Pa.

Secretary—J. R. RUDOLPH,
1524 Cuthbert Street, Philadelphia, Pa.

MEMBERS.

A. L. MAUGANS,
Store Department, Harrisburg, Pa.
J. A. MCLAUGHLIN,
Wilmington Shops, Wilmington, Del.

Vol. I April 9, 1923 No. 2

THE SUPREME COURT DECISION.

Newspaper accounts of the Supreme Court Decision in the case of the Pennsylvania Railroad System *vs.* United States Railroad Labor Board have no doubt been read with interest by all our forces.

A digest of the decision can but leave one with the impression that it is highly technical and concerns mainly an interpretation of the language of the Transportation Act of 1920 relative to the functioning of the United States Railroad Labor Board. We were glad to note, however, that the Supreme Court avoided condemning our plan of employe representation in any manner.

This was no more than we expected, as we could not comprehend how any court could condemn a plan of industrial democracy that has brought about such satisfactory relations between the employes and the Management of the country's greatest Railroad.

The question of the Management's attitude toward our plan of representation and working schedules at this time will naturally arise in many minds.

We can answer that question by assuring all concerned that, regardless of any propaganda to the contrary, our plan of representation, our Rules and Regulations and the By-Laws of this Association will continue in full force and effect, and we have no fear that if the *Public* whom we all serve is to finally decide the issue, that a verdict overwhelmingly in favor of the plan of employe representation on this Railroad will be handed down.

ATTEMPT BEING MADE TO ABOLISH PASSES IN STATE OF PENNSYLVANIA.

The following bill was introduced in the Legislature of the State of Pennsylvania, February 5, 1923, by Representative J. V. Lafferty, 4th District, 6th, 8th and 9th Wards of the City of Philadelphia:

AN ACT

"To enforce the provisions of Section Eight, Article Seventeen, of the Constitution of Pennsylvania, and providing penalties for the violation thereof.

Section 1.—Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that any officer, agent or other person connected with any railroad, railway, or other transportation company, who shall grant or issue free passes, or passes at a discount, to any person except officers or employes of said com-

pany, and then only when such officers or employes travel in connection with, and on account of the business of said railroad, railway or transportation company, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars.

Sec. 2.—All acts or parts of acts inconsistent herewith are hereby repealed."

Should this bill be enacted into law, it would mean that no passes could be issued for use in the State of Pennsylvania except when on Company's business. A Legislative Committee has been created to oppose the making of this act a law. Petitions are now in circulation in all legislative districts in the State of Pennsylvania, requesting various State Representatives to vote in the negative, when this bill comes up for passage. It is therefore important for each and every employe we represent who resides in the State of Pennsylvania to communicate at once with their Local Committee who are in charge of petitions in circulation for signatures protesting the passage of this bill.

EXHIBIT "KK."

PENNSYLVANIA RAILROAD SYSTEM.

Eastern Region — Central Region
Northwestern Region — Southwestern Region

GENERAL OFFICES, PHILADELPHIA, PA.

APPLICATION TO UNITED STATES RAILROAD LABOR BOARD TO VACATE DECISION IN SHOP CRAFTS CASE.

August 24, 1921.

Declaring that the Pennsylvania Railroad has a lawful right under the Transportation Act to establish

rules and working conditions with its employes, and that the contracts entered into by the Management and its employes are now in full force and effect, the Pennsylvania Railroad, through Samuel Rea, President, forwarded, today, an application to the United States Railroad Labor Board to "set aside and vacate" its recent decision in the case of the Shop Crafts Union.

In its application, the Railroad declared that:

> The Board has no right and power to prescribe principles to govern the Railroad and its employes in the making of agreements covering rules and working conditions;
>
> The Board has no power to prescribe an election or any other method by which the Railroad may ascertain who are the authorized representatives of its employes;
>
> The Board has no power to compel a conference or to prescribe what representatives of employes the Railroad shall confer with;
>
> Since the termination of federal control the Railroad has endeavored to re-establish with its own employes a contented and harmonious relationship and has offered all classes of employes a voice in matters affecting their welfare through employe representatives of their own selection, whether Union or Non-Union men;
>
> 66.5% of the employes who are interested in and affected by rules covering working conditions have by vote or otherwise expressed a desire to negotiate rules and working conditions through employe representatives;
>
> Contracts have been entered into between the Management and representatives of approximately 150,000 employes;
>
> Since the Board's decision, representatives of the various classes of employes with whom con-

tracts have been made have expressed their satisfaction, not only with the manner of selecting representatives, but also with the rules and working conditions agreed upon;

If the Railroad complied with the Labor Board's decision these contracts would be void "to the great and irreparable injury of the carrier and its employes."

The Railroad's application to the Labor Board follows in full:

THE UNITED STATES RAILROAD LABOR BOARD.

Decision No. 218 (Docket No. 4).

Railway Employes' Department, American Federation of Labor (Federated Shop Crafts),

vs.

Pennsylvania System.

APPLICATION FOR VACATION OF DECISION.

Now Comes The Pennsylvania Railroad Company in behalf of itself and its subsidiary and affiliated lines, known as the Pennsylvania System, hereinafter referred to as the "carrier," and by reason of the extension by the Railroad Labor Board of the time provided for in Decision No. 218 for a period of fifteen days from August 10, 1921, makes application to the Board, to vacate and set aside its said decision rendered in this cause, as dated, July 26, 1921.

1. The carrier renews its objections to the jurisdiction which were urged upon the hearing of this cause, and it avers that the Board had no power or authority in law (a) to extend the National Agreements and (b) after extension and

the order of termination as of July 1, 1921, to decide without a hearing on June 27, 1921, upon a further extension. The carrier avers that the National Agreements are as to it and its employes wholly terminated and of no force and effect.

2. The carrier denies the right and power of the Board to prescribe principles, which must in law govern the carrier and its employes in the making of agreements covering working rules and conditions. Notwithstanding this, the carrier has endeavored in negotiations with its employes to adopt and observe such of the said principles as are fundamentally sound and correct.

3. The carrier notes that the Board in this cause decides that it "acquired such jurisdiction," but it declares "that question is not of prime importance in this case." The Board also states, "There is no question of the closed or open shop involved in this dispute and no other real matter of principle. The question involved is merely one of procedure."

With these propositions the carrier takes direct issue. If the question is merely one of procedure, the carrier avers that the Board has no right or power to set up its judgment or opinion against that of the carrier. Dissatisfaction, whether real or fancied, by certain employes with matters of "mere procedure" should not be tortured into a "dispute" within the purview of Sections 301 and 307 of the Transportation Act. No fear need be entertained of "interruption to the operation of any carrier" because of differences between carrier and employes upon questions of "mere procedure." Disputes under the law, referable to the Board, are those of substance and real moment. Reduction of wages, real grievances, unfair, unreasonable, burdensome working rules

and conditions are the matters comprehended by the Transportation Act as prolific of "disputes" which might interrupt transportation, to prevent which the Labor Board was created.

4. The carrier denies the power of the Board to prescribe an election, or any other method, by which the carrier may ascertain who are the authorized representatives of its employes; and it avers that it cannot accept as advisory the rules and conditions set forth in the Board's decision in this cause. The carrier will, as the occasion requires, accord franchise rights only to its employes in service, or absent upon leave, and will not concede voting qualifications to men who have been laid off or furloughed and who may be engaged in other occupations, or may never return to the service of the carrier.

The carrier denies the power of the Board to compel a conference or to prescribe what representatives of employes it shall confer with, and it can not accede to the rule prescribed for ascertaining the representative capacity of the spokesmen for unorganized employes.

5. The carrier states that it has been its policy, since the termination of Federal Control, to re-establish with its own employes a contented and harmonious relationship, ever bearing in mind that honest, efficient and economical operation of its lines can be secured only by close and unrestricted co-operation by the management and the employes. With that end in view, it was determined that all classes of employes should have a voice in the administration of matters affecting their welfare through representatives of their own selection and that such representatives, whether union or non-union men, should be actual employes. In pursuance of this policy conferences

were held with representatives duly authorized and designated by the employes in the several crafts.

There are in the service of the carrier at this time approximately 176,000 employes who are interested in and affected by rules covering working conditions, and 117,176, or 66.5%, of said employes have by vote or otherwise, as a result of said conferences, expressed a desire to negotiate rules and working conditions through employe representatives. Accordingly, contracts respecting rules and working conditions have been entered into between the carrier and representatives of 149,918 employes, apportioned among the several classes, as follows:

Train and engine service employes.....	41,396
Clerks, and other office, station, storehouse, warehouse, and elevator forces, including engine and train crew callers	39,598
Maintenance of Way and Structures and shop laborers	40,209
Mechanics, helpers and apprentices, Maintenance of Equipment and Telegraph and Telephone	24,078
Signal Department Employes	2,061
Marine Department Employes	1,254
Dining Car and Restaurant Employes...	1,322
Total.....	149,918

6. Since the decision in this cause, the carrier has held conferences with representatives of the several crafts with whom contracts have been made for the purpose of ascertaining whether or not in the light of the said decision, said employes were satisfied with the manner of selecting rep-

resentatives and with the rules and working conditions actually agreed to; and as a result of said conferences, the said employes through their representatives manifested their satisfaction not only with the manner of selecting representatives but also with the rules and working conditions embodied in the said agreements.

On August 22, 1921, a general conference was held with representatives of employes who had been selected by ballot in accordance with the plan of election submitted by the carrier after the publication of the Board's Decision No. 119. To this conference at least 250 representatives of System Federation 90 of the American Federation of Labor, employed by the carrier, were invited, but, acting under the instructions of the President of System Federation 90, but few of such representatives attended this conference.

In this connection it may be stated that many of said employe representatives are union men, and in the case of several crafts the entire delegation of elected representatives consists of union men. At this conference the employe representatives again signified their approval of and their satisfaction with the plans and purposes of the management and the contracts which had been duly executed.

7. The carrier states that the contracts between itself and its employes are in full force and effect, and by their terms the parties thereto have acquired mutual rights and assumed mutual obligations; and that if the carrier complied with the decision of the Board in this cause, the said contracts will be void and of no effect, to the great and irreparable injury of the carrier and its employes, parties to the said contracts.

8. The carrier represents to the Board that the rights of the employes who are not parties to the said contracts and who do not want to be bound thereby have not been impaired in any manner, for the reason that they may at any time invoke the aid of the Board, if they are of opinion that the rules and working conditions contained in the said contracts, and now in effect upon the carrier's lines of railroad, are unfair and unreasonable.

9. WHEREFORE, the carrier asks that the Board vacate and set aside its decision in this cause and find in pursuance of the Transportation Act (a) that the carrier has the lawful right to establish rules and working conditions in the first instance, either with or without first holding conferences with its employes; and (b) that the contracts respecting rules and working conditions heretofore entered into by the carrier and its employes in the shop crafts are now in full force and effect without any further action on the part of the carrier and its employes in the said shop crafts.

10. The carrier hereby makes request of the Board for an oral hearing of this application, at which time evidence in support of the allegations of fact herein contained will be introduced.

Respectfully submitted,

(Signed) SAMUEL REA,
President, The Pennsylvania
Railroad Company.

PHILADELPHIA, PA., AUGUST 24, 1921.

EXHIBIT "MM."

PENNSYLVANIA RAILROAD SYSTEM.
CENTRAL REGION.

CLERICAL EMPLOYES' ASSOCIATION.

Effective May 1, 1923.

PENNSYLVANIA RAILROAD SYSTEM.
CENTRAL REGION CLERICAL EMPLOYES' ASSOCIATION.

CONSTITUTION AND BY-LAWS.

PREAMBLE.

In order to establish satisfactory working conditions, adjust differences as they may arise and promote a mutual understanding between the Management and the Clerical forces under the jurisdiction of General and Division Superintendents, Pennsylvania Railroad System, Central Region, this Constitution and By-Laws is hereby adopted.

TITLE.

This association shall be known as the "Pennsylvania Railroad System—Central Region Clerical Employes' Association."

ARTICLE I.—EMPLOYES AFFECTED.

SEC. 1. All clerical forces of the various grades in all offices and departments under the jurisdiction of General and Division Superintendents affected by "Regulations for the Government of Clerical Forces under the jurisdiction of General and Division Superintendents," effective August 1, 1921, shall be entitled to participate in the privileges hereinafter outlined.

SEC. 2. Said privileges shall terminate upon severance of active employment with the Company.

ARTICLE II.—REPRESENTATION.

SEC. 1. Except as provided in Article III, Section 1, employes as defined in Article I, Section 1, on each Superintendent's Division and in each General Superintendent's District shall be entitled to elect from among their number three employes to represent them on their Division or in their District.

SEC. 2. The employes now serving as Local Committeemen will serve in that capacity as follows:

(a) The Committeeman who is now Local Chairman for a period of three years.

(b) Of the other two, the one receiving the higher number of votes for a period of two years.

(c) The third member for a period of one year.

NOTE:—This section applies only to employes elected in June, 1921 election.

SEC. 3. Elections will be held on each Superintendent's Division, and in each General Superintendent's District, on the third Monday in May of each year, for the purpose of choosing a representative for each Division and General Superintendent's District. Such representatives shall be elected for a term of three years and shall be eligible for re-election. The term of office of the representative-elect shall begin on the first day of August following election.

SEC. 4. The Local Committee on each Superintendent's Division and in each General Superintendent's District will select one of their number to serve as Local Chairman. The term of office of the Chairman will begin August 1st and will be for one year.

NOTE:—The term "General Superintendent's District" is understood to mean his immediate office and the offices of his immediate staff, excluding offices of Division Superintendents.

ARTICLE III.—QUALIFICATIONS OF VOTERS AND REPRESENTATIVES.

SEC. 1. All employes defined in Article I, Section 1, except those entering service subsequent to March 31st of each year, shall be entitled to petition for nominees and vote at all elections.

SEC. 2. Employes covered by this plan who have had two years or more continuous service in a clerical capacity with the Company prior to date of election, who are American citizens and who are 21 years of age or over on the date of election, shall be eligible for election as representatives.

ARTICLE IV.—NOMINATIONS AND ELECTIONS.

SEC. 1. Nominations and elections shall be held annually in the month of May.

SEC. 2. Nominations shall be made on the first Monday and elections held on the third Monday in the month named. Where either of these days fall on a holiday, the day immediately following shall be substituted.

SEC. 3. Nominations and elections shall be conducted in accordance with rules and regulations prescribed by the Regional Joint Committee, acting as a Rules Committee, with only such assistance from the Management as may be required by said Committee.

SEC. 4. Elections shall be by secret ballot, and so conducted as to avoid undue influence or interference

with voters in any manner whatsoever, and to prevent fraud in the counting of ballots.

SEC. 5. Nominations shall be by petition. Petitions signed by 25 qualified voters on a Superintendent's Division and 10 qualified voters in a General Superintendent's District shall place the name of the one petitioned for upon the primary ballot, except that on Divisions having less than 250 employes of the class affected by this plan, the number of names required on a petition shall be 10% of such employes.

SEC. 6. The election ballot for each Division and General Superintendent's District shall contain the names of all those placed in nomination as a result of petition on that Division or District.

SEC. 7. The number of candidates to be voted for shall be stated on the ballot. If this number is exceeded the ballot shall be void.

SEC. 8. Voters shall indicate their preference on the election ballot by placing a cross (X) opposite the name of the candidate they wish to elect. Any erasure, addition, interlineation or other mark or marks shall render the ballot void.

SEC. 9. The Regional Joint Committee, acting as a Rules Committee, shall determine—

(a) The type and location of ballot boxes and voting booths.
(b) The hours during which voting will be conducted.
(c) The form of letter ballot to be used by those voting by mail.
(d) The conditions under which a voter will be permitted to vote by mail.

SEC. 10. The candidate reciving the highest number of votes shall be declared elected. In the event of a tie, the Regional Joint Committee, acting as a Rules Committee, shall order a special election. At this special election only the names of the candidates who are tied will appear on the ballot.

SEC. 11. Controversies concerning nominations or elections shall be referred to and be decided by the Regional Joint Committee, acting as a Rules Committee.

SEC. 12. Immediately following the counting of the ballots, the Regional Joint Committee, acting as a Rules Committee, shall prepare an election certificate, a copy of which shall be furnished each representative elected, a copy posted on bulletin boards and a copy furnished the Division or General Superintendent.

SEC. 13. Vacancies occurring on Division Committees shall be filled by the remaining members of such Committee. In the event they cannot reach a decision, or where there are two or more vacancies on a Division Committee at the same time, such vacancies shall be filled by the Regional General Committee provided for in Article VI. A representative or representatives thus elected shall serve for the unexpired term of their predecessors.

ARTICLE V.—LOCAL COMMITTEES.

SEC. 1. The elected representatives on each Division and General Superintendent's District shall constitute the Local Committee on that Division or District, and shall meet the first Monday in June of each year for the purpose of organizing. At this meeting each Local Committee shall elect a Chairman, Vice

Chairman and Secretary from their number to serve for one year.

SEC. 2. Meetings of the Local Committees shall be called by their Chairmen as occasion demands.

ARTICLE VI.—REGIONAL GENERAL COMMITTEE.

SEC. 1. The Local Chairmen on the Superintendent's Divisions comprising a General Superintendent's grand division will, between the first and second Monday in June, elect one of their number who will serve as General Chairman for a period of one year.

SEC. 2. The Local Chairmen of the General Superintendent's Districts will, between the first and second Monday in June, elect one of their number to serve as General Chairman for a period of one year.

SEC. 3. The five General Chairmen thus elected will constitute the Regional General Committee and shall meet on the second Monday in June of each year for the purpose of organizing. At this meeting the Committee shall elect from their number a Chairman, Vice Chairman and Secretary to serve for one year.

SEC. 4. Meetings of the Regional General Committee shall be called by the Chairman as occasion demands.

ARTICLE VII.—REGIONAL JOINT COMMITTEE.

SEC. 1. The members of the Regional Joint Committee for the employes shall be the members of the Regional General Committee.

ARTICLE VIII.—REVISION OF REGULATIONS.

SEC. 1. Additions to or changes in existing Regulations shall be passed upon by the General Committee, consisting of all Local Chairmen, and handled with

the Management by the Regional General Committee. The officers of the Regional General Committee shall preside at all meetings of the General Committee.

ARTICLE IX.—AMENDMENTS.

SEC. 1. This Constitution and By-Laws may be amended by a two-thirds vote of the General Committee.

H. C. CLARK.
C. L. ELLEMAN.
G. D. HALL.
E. K. ALLEN.
B. W. REDMAN.
F. R. MURDOCK.
W. W. BENEDICT.
A. F. ROACH.
E. H. HOST.
R. R. WILSON.
R. P. RHODES.
HARRY SCHREPFER.
B. F. BROWN.
A. L. SHAFFER.
J. M. SYMES.
C. H. EDMUNDSON.
P. E. LEHMANN.

EXHIBIT "NN."
(Filed November 14, 1923.)

COPY

April 28, 1923.
Docket 405.

Mr. Samuel Rea, President,
Pennsylvania Railroad System,
Broad Street Station,
Philadelphia, Pa.

Mr. E. H. Fitzgerald, Grand Pres.,
Bro. of Railway & Steamship Clerks,
2nd National Bank Bldg.,
Cincinnati, Ohio.,

Gentlemen:—

The Labor Board will conduct a hearing, 22nd. floor, Transportation Building, 608 S. Dearborn Street, Chicago, Illinois, beginning 10 A. M. Chicago Daylight Saving Time, May 21, 1923, in connection with complaint of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes against alleged failure of the Pennsylvania System to properly apply Decision 220 in Docket 405.

You are cited under Section 313 of the Transportation Act, to appear at above hearing, in order that the Board may make necessary inquiry to enable it to determine whether a violation has occurred.

Yours truly,

37-044

I hereby certify this to be a true and correct copy.

L. M. PARKER
Secretary,
U. S. R. R. Labor Board.

Before me this 31st day of October, 1923.

GERTRUDE M. DILL,
(Seal) *Notary Public.*
My commission expires August 28th, 1924.

EXHIBIT "OO."
(Filed November 14, 1923.)

PENNSYLVANIA RAILROAD SYSTEM.

Philadelphia, May 18, 1923.

Mr. L. M. Parker,
Secretary, United States Railroad Labor Board,
608 South Dearborn Street,
Chicago, Ill.,

Dear Sir:—

Referring to your letter of April 28th, advising of meeting to be held on May 21st, 1923, in connection with complaint of the Brotherhood of Railway and Steamship Clerks, as to the alleged failure of the Pennsylvania Railroad System to properly apply Decision No. 220 in Docket 405.

The Clerical and Miscellaneous Forces on the Pennsylvania Railroad System, whom the Brotherhood of Railway and Steamship Clerks claim the right to represent, adopted the plan of employe representation and elected by secret ballot the employes they desire to represent them in matters pertaining to their rates of pay and working conditions. There is no dispute now pending between the elected representatives of the employes and the Management, which, in our opinion will not be amicably adjusted. We respectfully submit, therefore, that the Brotherhood of Railway and Steamship Clerks does not represent the Clerical and Miscellaneous Forces within the contemplation of the Transportation Act, and we shall not be represented either orally or in writing at meeting scheduled to be held by your Board on May 21st, 1923.

Very truly yours,

(Signed) SAMUEL REA,
President

I hereby certify this to be a true copy.

L. M. PARKER
Secretary,
U. S. R. R. Labor Board.

Before me this 7th day of November, 1923.

GERTRUDE M. DILL,
(Seal) *Notary Public.*

EXHIBIT "PP."
(Filed November 14, 1923.)

COPY

Chicago, May 21, 1923.

Samuel Rea, President
Pennsylvania Railroad,
Philadelphia, Pa.,

Railroad Labor Board today directed that you be summoned to appear before the Board May twenty-eighth at 2. P. M., to testify in the case of the Brotherhood of Railway and Steamship Clerks vs Pennsylvania Railroad, the case pending before the Board under section three thirteen of the Transportation Act. Please let me know whether you will voluntarily appear without formal subpœna.

BEN W. HOOPER,
Chairman.

Send at Gov. rate
Charge to RR Labor Board.

I hereby certify this to be a true and correct copy.

L. M. PARKER
Secretary,
U. S. R. R. Labor Board.

Before me this 31st day of October, 1923.

GERTRUDE M. DILL,
(Seal) *Notary Public.*
My commission expires August 28th, 1924.

(EXHIBIT "RR."
(Filed November 22, 1923.)

THE PENNSYLVANIA RAILROAD SYSTEM
MISCELLANEOUS FORCES'
ASSOCIATION
OF THE
OPERATING DEPARTMENT.
EASTERN REGION.

INSTRUCTIONS PROMULGATED BY THE
REGIONAL JOINT COMMITTEE
MISCELLANEOUS FORCES
GENERAL ELECTIONS
MAY, 1923.

REGIONAL JOINT COMMITTEE.
MISCELLANEOUS FORCES.

PENNSYLVANIA RAILROAD SYSTEM—EASTERN REGION.

Philadelphia, Pa., April 2, 1923.

TO THE PENNSYLVANIA SYSTEM MISCELLANEOUS FORCES' ASSOCIATION OF THE OPERATING DEPARTMENT, EASTERN REGION.

Pursuant to the provisions of Section 3, Article IV, of the By-Laws reading:

"Nominations and elections shall be conducted by the members of this Association in accordance with the rules and regulations prescribed by the Regional Joint Committee acting as a Rules Committee, with only such assistance from the Management as may be required by said Committee."

the following is promulgated:

ELECTION BALLOT.

Form of.—See copy of "Election Ballot," page 12.

How to be distributed.—Through heads of the various Departments in conjunction with Local Committeemen.

Number of names to be placed on ballot.—All duly nominated on each division.

Shall the employe's receipt be taken for the ballot, and how?—Yes, in writing on Poll List—Election Roll as per sample, page 13.

Blank Poll List—Election Roll will be furnished to each Superintendent and General Superintendent not later than Saturday, April 21, 1923. Each Superintendent and General Superintendent, in conjunction with his respective Local Committee, shall have the first three columns on the Poll List—Election Roll filled out with the names (in alphabetical order), occupation and location of all those who are eligible to take part in this election by departments.

THE PENNSYLVANIA RAILROAD SYSTEM MISCELLANEOUS FORCES' ASSOCIATION OF THE OPERATING DEPARTMENT —EASTERN REGION.

POLL LIST—ELECTION ROLL.

.....Division.

We, the undersigned have received the sealed envelope containing ballot and necessary envelopes with instructions for use in balloting at the annual election to be held May 21, 1923:

NAME	OCCUPATION	LOCATION	SIGNATURE	DATE
.....				
.....				
.....				
.....				

EXHIBIT "SS."
(Filed November 16, 1923.)

November 9, 1923.

I hereby certify that the attached copy of Decision 1827, United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers v. Pennsylvania Railroad (Dockets 2498 and 2631) dated June 8, 1923, is a correct copy of Decision 1827 of the United States Railroad Labor Board.

L. M. PARKER, *Secretary.*
United States Railroad Labor Board.

Before me this 9th day of November, 1923.
GERTRUDE M. DILL,
(Seal) *Notary Public.*
My commission expires Augst 28th, 1924.

RLB—Copy 1150 — DOCKET 2498 and 2631

UNITED STATES RAILROAD BOARD
Chicago, Ill., June 8, 1923.

Decision No. 1827

United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers
v.
Pennsylvania System.

Question—(a) Recognition of Joseph Greek, general chairman of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, as the duly authorized representative of the employees affiliated with that organization.

(b) Leave of absence and free transportation to Joseph Greek for the transaction of business as the employees' representative.

(c) Shall the agreement negotiated with committee of the above-named organization, which became effective August 15, 1921, be continued in effect, and shall the rules promulgated in Decision No. 501 be incorporated in said agreement where corresponding to the rules in dispute?

Statement—The evidence shows that pursuant to and in conformity with the provisions of the Transportation Act, 1920, and with Decision No. 119 of the Railroad Labor Board, conferences were held between representatives of the carrier and representatives of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers for the purpose of negotiating an agreement. Leo I. Kennedy was at that time general chairman of the brotherhood and was recognized as such by the carrier. This was equally true with respect to the committeemen, all of whom represented the organization herein referred to.

Mr. Kennedy and the committeemen were selected as representatives of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers by ballot taken on June 2, 1921, in which the rank and file participated, and which the carrier recognized as expressing the wishes of the employees. The negotiations conducted resulted in an agreement being reached relative to all matters with the exception of three rules namely: 4-c-1, 4-c-2 and 4-e-1. These disputed rules were referred to the Railroad Labor Board for decision. Addendum 1 to Decision No. 501 was issued on December 23, 1921, which addendum made the Pennsylvania System a party to Decision No. 501, and it was the intention of the Board that the provisions of said decision would apply with equal force to the Pennsylvania System as if originally

named in that decision, so far as disputed rules were concerned.

Immediately following the negotiations referred to an agreement was formulated and signed by representatives of the carrier and Mr. Kennedy, who signed himself as general chairman of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, clearly indicating that the agreement was between the Pennsylvania System and the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers. This agreement was entered into and signed August 15, 1921, or prior to the date on which this carrier was made a party to Decision No. 501, and the disputed rules were therefore ommited from said agreement, apparently until such time as the Railroad Labor Board had handed down its decision.

It is shown that shortly prior to November 7, 1921, Mr. Kennedy, who at that time was General Chairman of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, called a meeting of all local lodge presidents, secretaries, joint protective board members, and division chairmen of the Pennsylvania Railroad. The stenographic report of the meetings so held clearly indicates that Mr. Kennedy and several of his constituents had definitely planned this meeting for the purpose of withdrawing from the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers and inaugurating a separate organization or system fraternity. The minutes of these meetings show that it was the wish of certain of those in attendance that the matter of withdrawing from the brotherhood be submitted to the employees for vote to determine whether or not they desired such action. This proposal was vigorously denounced by Mr. Kennedy and certain of his constituents, and the motion that the matter be

referred to the rank and file was overruled. The motion to withraw from the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers was adopted, after which a constitution and by-laws were drawn up and adopted for the regulation of the System Fraternity.

It is shown that the carrier was duly notified of the formulation of the System Fraternity and agreed to meet the representatives, and did meet them in conference for the purpose of discussing rules and working conditions. It is further shown that the carrier recognized Mr. Kennedy as the duly authorized representative of the employees and thereupon abrogated the agreement entered into with the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, without compliance with the terminating clause included therein or without notification or consultation with the duly authorized representative of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers.

A new agreement effective January 1, 1922, was entered into with a committee representing the System Fraternity and was signed by representatives of the carrier and Leo I. Kennedy, General Chairman, Pennsylvania System Fraternity. There is nothing in the evidence, however, to indicate that the System Fraternity was duly authorized by a majority of the employees involved to represent them in said negotiations, as contemplated in principle 15, exhibit B, Decision No. 119. On the other hand, it is shown that the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers did satisfy the carrier prior to the negotiation of agreement effective August 18th, 1921, that they did represent a majority of the employees involved.

It is the contention of the complainant organization in this case that after the employees were enabled

to ascertain the exact status of affairs, a vast majority have repudiated and condemned Mr. Kennedy and his associates, and that at the time of the submission he only represented a small minority, despite coercion and threats alleged to have been made in an effort to force the employees to affiliate with the Pennsylvania System Fraternity. It is their further contention that on February 20, 1922, at a meeting of the duly accredited representatives of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, Joseph Greek was duly elected general chairman to represent that organization, of which the management was subsequently apprised, at which time the representatives requested a leave of absence and free transportation for Mr. Greek to adjust differences and disputes between the employees and the management. This was refused by the carrier apparently on the ground that he was not recognized as the duly authorized representative of the employees.

It is also the contention of the complainant organization that the agreement effective August 15, 1921, is still legally in effect and that the alleged agreement dated January 1, 1922, should have no standing account of the alleged illegal manner in which it was promulgated. Further, that sections a, a-5, a-6, a-9, and a-10, respectively, Article V of Decision No. 501, should be incorporated in and considered a part of the agreement effective August 15, 1921, and should remain in effect unless and until changed in conformity with the terminating clause thereof and the provisions of the Transportation Act, 1920.

Opinion—The agreement dated August 15, 1921, was duly executed with the definite sanction of a majority of the employees interested and did not represent an action instituted by the representatives alone. This agreement was apparently entered into in good faith as an agreement between the Pennsylvania Sys-

tem and the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers and not between Mr. Kennedy and his committee. Hence, while it is the procedure for some individual or individuals to sign for either party thereto, the document does not constitute an agreement between the individuals signatory thereto, but between the carrier or organization which they assume and have been duly authorized to represent.

Mr. Kennedy in signing the agreement, dated August 15, 1921, did so for and on behalf of employees represented by the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers. Mr. Kennedy, therefore, had no authority to abrogate an agreement negotiated with said organization, nor did the carrier comply with the provisions of the Transportation Act, 1920, nor with the agreement duly negotiated, when it agreed to recognize a committee as being the duly authorized representative of the employees, when no evidence was introduced to indicate that a majority of the employees desired such action, or any opportunity extended to the organization party to this dispute to show whether or not the employees desired that organization to continue representing them.

It is unreasonable as well as inconsistent to assume that an individual, duly authorized to represent an organization, and who has been duly authorized by the employees to represent that organization, can take the position that he represents the same employees under some other form of organization without securing their sanction.

The procedure followed in this case with respect to the abrogation of a duly-executed agreement without conference with or sanction by one of the parties thereto is a new departure, and one which if extended, would practically abrogate any agreement that might be entered into if the individuals signatory thereto

desired a change, regardless of the wishes of those whom they were originally chosen to represent.

The Railroad Labor Board, after weighing the evidence must state that the action on the part of the carrier in this case is not in line with the principles enumerated in the Transportation Act, 1920, nor does it represent a just and reasonable basis of business dealings with employees' representatives as guaranteed by said Act.

The Board therefore decides:

Decision—(a) That from the evidence submitted Joseph Greek is the duly authorized general chairman of the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers and should be recognized as such by the carrier.

(b) That Mr. Greek should be granted leave of absence and free transportation for the handling of matters affecting the classes of employees of the railroad represented by him.

(c) That the agreement entered into with the United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers, effective August 15, 1921, shall be considered in effect from its effective date and continued in full force and effect until changed in conformity with the terminating clause thereof. The rules as promulgated in Decision No. 501, where corresponding to the rules in dispute and which were omitted from the agreement dated August 15, 1921, shall be incorporated in and considered a part of this agreement.

By order of

UNITED STATES RAILROAD LABOR BOARD,

(Signed) BEN W. HOOPER,
Chairman.

Attest:

L. M. PARKER,
Secretary.

EXHIBIT "TT."
(Filed November 22, 1923.)

I hereby certify this to be a true copy of Decision 1833, Docket 405.

L. M. PARKER,
Secretary, U. S. R. R. Labor Board.

Before me this 30th day of October, 1923.
GERTRUDE M. DILL,
(Seal) *Notary Public.*
My commission expires August 28th, 1924.

RLB—Copy 1150 DOCKET 405

UNITED STATES RAILROAD LABOR BOARD
Chicago, Ill., June 23, 1923.

Decision No. 1833.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
v.
Pennsylvania System

NATURE OF THE PROCEEDING.

This is a proceeding under Section 313 of the Transportation Act, 1920, brought for the purpose of ascertaining and declaring whether or not the Pennsylvania System has violated Decision No. 220 of the Railroad Labor Board.

HISTORY OF THE CASE.

After the termination of Federal control of the railroads, there was a general movement upon the part of the carriers for a revision of rules and working conditions, and the Railroad Labor Board directed

that proper conferences be held for the adjustment of the disputes.

The above-named organization of employees, as a party to the outstanding agreement on rules, notified the carrier of its readiness to proceed with the negotiations. About twenty-four (24) days later, the carrier answered the employees' communication, notifying the representatives of said organization that it would meet them, and, on the date set, the representatives of the carrier and the clerks' organization met in conference.

In this conference, it was conceded by the carrier that the employees of the class in question had the right under the Transportation Act, 1920, to select their representatives to negotiate with the carrier the rules and conditions under which their work should be performed. To this end the carrier submitted a plan for taking a ballot of said employees to name their representatives. The representatives of the employees declined to accept said plan and made a counter suggestion which was rejected by the carrier. Thereupon, without any adjustment of the difference that had arisen, the carrier proceeded to take a ballot of the employees of the class involved, making such subdivisions of the employees as it saw fit, both as to territory and class, and arranging the ballot according to its own views and without regard to the suggestions of the employees.

As examples of the results of the balloting, the evidence shows the following, all of which is admitted by the carrier:

1. On the Akron division, Central Region, where there were 172 clerks, the committeemen selected in the election held by the carrier received, respectively, 5, 5 and 4 votes.

2. On the Eastern division, Central Region, out of 750 eligible clerical votes, the committeemen

which the carrier declared elected, received, respectively, 94, 65 and 61 votes.

3. On the Pittsburgh division, Central Region, out of 1,345 eligible clerical votes, the committeemen received, respectively, 151, 147 and 146 votes.

4. On the Northern division, Central Region, the chairman of the committee was elected by a vote of 20.

5. On the Renovo division, from a total of 305 eligible votes, the committeemen declared to be elected received 19 votes.

It appears from the proof that on certain divisions some of the members of said clerks' organization voted in the election conducted by the carrier, casting their ballots for the "Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees" or for the "System Board of Adjustment" of said clerks' organization.

For example: On the Baltimore division, Eastern Region, 414 votes were cast for the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. These votes were thrown out and committeemen declared elected who received 28 votes.

On the Chicago Terminal division, Northwestern Region, the system board of adjustment of said clerks organization received 495 votes. These ballots were ignored as void, and committeemen were declared elected who received, respectivly, 105, 83 and 76 votes.

In the general offices in Pittsburgh, in the office of the auditor, through traffic, and system board of adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, received 512 votes which were declared void by the carrier and were not counted.

After the carrier had carried out the procedure above outlined, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes submitted to the Railroad Labor Board a complaint or dispute, calling into question the correctness and rightfullness of the carrier's conduct. The case was duly heard, with both sides represented, and Decision No. 220 was rendered by the Board on August 3, 1921, in which it was held that the course pursued by the carrier was not in conformity with the Transportation Act, 1920, that the election held by the carrier was illegal and in violation of the employees rights, and that a new election should be held in which the employees should be accorded the unhampered opportunity to vote for representatives of their choice, either individuals or an organization.

When the attention of the Railroad Labor Board was called to the alleged fact that the carrier had failed to comply with Decision No. 220, an inquiry was instituted under Section 313 of the Transportation Act, 1920, for the purpose of ascertaining and formally declaring whether or not the carrier had violated the decision of the Board. Before the hearing of this case, the carrier obtained from a Federal district judge an injunction inhibiting the Railroad Labor Board from issuing a decision under Section 313 in a similar case involving the shop-craft employees. The language of the injunction was sufficiently broad and comprehensive to restrain the Board from proceeding under Section 313 in the clerks' case as well as the shop-crafts case, and the Board therefore held the present inquiry in abeyance until the court of last resort had passed upon the questions involved.

On February 19, 1923, the Supreme Court of the United States handed down a decree in which it sustained the contentions of the Board, overruled those

of the Pennsylvania System and dissolved the injunction. The Court held that the Railroad Labor Board had jurisdiction of a dispute involving the question of who should represent a craft or class of employees in the conferences with the carrier required by the Transportation Act and how those representatives should be selected.

Following the termination of this suit in the Federal courts, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, through their chairman on the Pennsylvania railroad, immediately addressed a communication to the carrier's management requesting the renewal of negotiations and the application of Decision No. 220. This letter and a subsequent one were ignored and soon thereafter the Board endeavored by direct conference with the carrier's officials to obtain the carrier's acquiescence in the decision of the Supreme Court. Failing in this, the hearing of the case was set for May 21, 1923. The carrier responded to the notice by declining to appear, and in its answer left the inference that the original dispute had been adjusted between itself and the employees. At the hearing, upon motion of the representative of the employees, the president of the Pennsylvania System was summoned before the Board to testify concerning the facts of the case, and, particularly, as to the statements contained in his letter to the Board. His testimony disclosed the fact that the dispute had not been adjusted and that the only agreement purporting to have been made with the employees in question was that made with the representatives of a minority of the employees selected by the election arbitrarily held by the carrier and declared by the Board to have been unfair, illegal and void.

The evidence introduced by the employees showed the further fact that employees, who had insisted upon the right of majority representation as guaranteed by Congress and declared by this Board, had been harassed by officials of the carrier and coerced into an attitude of silent submission or discharged from the service of the carrier.

Notwithstanding the fact that the statute provides that a class of employees shall enjoy the right of selecting the representatives of such class, one of the carrier's counsel before the Board made this statement: "We claimed the right to deal with our employees either through a majority or minority representation." In other words, the carrier arrogates to itself the privilege of treating with contempt the principle of majority representation, which is fundamental not only in the Transportation Act, 1920, but throughout the constitution and the institutions and laws of our land.

OPINION.

The position of the Pennsylvania System in this matter is devoid of intrinsic merit, violative of the will of Congress, and destructive of the rights of the employees. The employees were not seeking any advantage over the carrier and the Railroad Labor Board had not presumed to encroach on the prerogatives of the management in any sense. The public should also understand that no question of wages, rules, discipline, or management was involved. The mooted question of the open or closed shop was not at issue. There was no proposal to arbitrarily require the carrier to deal with any particular labor organization. The only issue was one of such insignificant import to the carrier as to make its flagrant course one of astonishment to disinterested citizens. The issue is tersely stated, stripped of all surplusage, in the following question

and answer quoted from the record of the statement, at the hearing, of a Vice President representing the Pennsylvania System:

> "Question: Simply drawing this distinction, that, if they will agree to deal with you as individuals, you will deal with them; but, if they deal with you as officials representing employees' organizations, you will not deal with them?"
>
> "Answer: You have stated it correctly."

In the face of this statement of the carrier's position, the fact remains that the carrier has negotiated agreements with the four train- and engine-service brotherhoods, which are now outstanding and on file in this case, and which are signed by the officials of those organizations as such as not as individuals. This inconsistent course involves the admission on the part of the road that it respects the rights of employees when they are backed by the four powerful train and engine brotherhoods, but not when they have only the support of the newer and less potent clerks' organization.

The Railroad Labor Board cannot subscribe to such a doctrine. It is contrary to the very essence and spirit of the Transportation Act, 1920, which is predicated on the idea that the rights of neither the carrier nor the employees should be dependent upon force and power, but upon justice and reason. If same just recognition had been accorded to the clerks' organization that was conceded to the engineers, firemen, conductors and trainmen, this dispute would never have arisen and the Pennsylvania System would not now find itself in the lone attitude among all the great railroads of the United States of attempting to nullify the Transportation Act, and that, not in the defense of its rights but in the oppression of its employees.

Moreover, in still another analogous case, has the Pennsylvania System lapsed into a glaring inconsistency. Having refused in a similar way to recognize the maintenance of way brotherhood and having fostered an opposition organization called the Pennsylvania System Fraternity, the carrier proceeds to enter into an agreement with this fraternity which is executed for the fraternity by its general chairman, officially and not individually. Thus demonstrating against the purpose of the carrier to attempt to break down and destroy those organizations which appear to be the chosen representatives of a majority of the employees, even though it be found dealing with the new organization in identically the manner in which it refused to deal with the old one.

Throughout this controversy, the employees concerned and their representatives have borne themselves in a manner worthy of the highest commendation. Deprived of their rights, they did not strike and visit their grievances upon the heads of an unoffending public. Sustained in their requests by the Railroad Labor Board, which in turn was approved by the courts of the country, they have proceeded quietly about the performance of their duties, awaiting ultimate justice. Surely the Congress of the United States when it reconvenes will take proper steps to guarantee to the employees and to the public that no carrier, however great and powerful, shall again propagate industrial discord and endanger public tranquility by flouting the will of Congress as interpreted by the established courts and tribunals of our country. This thought is embodied here in response to the petition of these employees that the Railroad Labor Board formally call the attention of Congress to this situation.

DECISION.

The Railroad Labor Board decides that the Pennsylvania System has violated Decision No. 220 of the Board, and after invoking the judgment of the Federal courts as to the Board's right to render said decision, has persisted in such violation in contempt of the unanimous opinion of the United States Supreme Court sustaining the jurisdiction of the Board.

By order of

UNITED STATES RAILROAD LABOR BOARD.

(Signed) BEN W. HOOPER,
Chairman.

Attest:
L. M. PARKER,
Secretary.

EXHIBIT "UU."
(Filed November 22, 1923.)

THE PENNSYLVANIA RAILROAD SYSTEM.
OFFICE OF THE PRESIDENT.

Philadelphia, Pa., June 28, 1923.

To the Employes of the Pennsylvania Railroad System:

It is regrettable that the Labor Board in its attacks upon the Pennsylvania Railroad System is not entirely candid with the public.

The Labor Board's statements convey the impression that our Company was under obligation to comply with the decisions of the Board on account of the Supreme Court decision.

The fact is that the United States Supreme Court made it very plain that our Company was not obliged to observe the Labor Board's decision if it felt that

its constitutional and legal rights were being invaded. The Management was firmly convinced that the constitutional and legal rights of the Company and its employes would be invaded if it complied with the decisions of the Board in the shopcrafts' and clerks' cases.

Ours is a law-abiding Company. The Management desires to obey every valid law enacted by properly constituted authority. Within that limitation it holds itself responsible to the public for the safe and economical operation of its railroad. That responsibility it cannot escape, nor can it permit the assumption of such responsibility by the Labor Board.

There is a fundamental difference in the point of view of the Management and the Labor Board. That difference goes to the very essence of the relationship between this Company and its employes. Apparently, the Labor Board considers itself to be the arbiter of rules for carrying on what it conceives to be a perpetual struggle between a railroad and its employes. The purpose of the Management is not to struggle against or to triumph over its employes, but to gain their loyalty and co-operation by a policy of fair dealing, mutual consultation and just compensation.

The decisions of the Board with which this Company has not complied were rendered about two years ago, since which time the plan of employe representation has continued to develop, and its success is evidenced by the fact that in elections just held to fill expiring terms of employe representatives, more than 80 per cent. of the employes affected voted in the election of employe representatives to deal with the Company.

It is not our purpose to point out all the misstatements and erroneous conclusions which appear in these decisions.

The Management takes specific exception however, to the statement of the Labor Board that the Pennsylvania Railroad has denied to its employes any essential rights to which Congress had declared them entitled. There is no warrant whatever for such a statement. As you well know, under our system of employe representation the employes and the Management are working in the closest harmony. Machinery has been provided whereby all controversial questions may be submitted to a court of last resort, composed of an equal number of representatives of employes and management. There is now no dispute of any consequence with our employes which we believe will not be amicably adjusted. The only real discordant note is that being sounded by the Labor Board.

In compliance with the provisions of the Transportation Act, the desire of the Management is to promote the efficiency of this Company's service to the public through placing upon the soundest possible basis the relationship between the Management and its employes; but it is firmly convinced that this cannot be accomplished by yielding to the demands of the Labor Board to recognize organizations which are committed to the closed shop, the sympathetic strike and limitation of output.

The Management is confident that neither its employes nor a well-informed public will be misled by the Labor Board's unwarranted statements.

It is unfortunate that this Board, in the face of unmistakable facts, should through the medium of its decisions resort to such attacks instead of, as it should, commending both the employes and the Management of the Pennsylvania Railroad System for our success in providing a mutually satisfactory means of preventing discord and promoting industrial peace, of which you are aware from the results that have been

achieved, and in which you have so cordially co-operated.

SAMUEL REA,
President.

EXHIBIT "VV."
(Filed November 22, 1923.)

PENNSYLVANIA RAILROAD SYSTEM.

General Office, Broad Street Station, Philadelphia.

Eastern Region	Northwestern Region
Headquarters, Philadelphia	Headquarters, Chicago
Central Region	Southwestern Region
Headquarters, Pittsburgh	Headquarters, St. Louis

PENNSYLVANIA ADVISES LABOR BOARD THAT EMPLOYES FAVOR EXISTING REPRESENTATION PLAN.

Letter from President Rea to Chairman Hooper follows meeting with 775 local committeemen, representing shop employes on the System.

April 27th, 1923.

Samuel Rea, President of the Pennsylvania Railroad System, replied today to an inquiry from Ben W. Hooper, Chairman of the United States Railroad Labor Board, as to what action the Company proposed to take following the Supreme Court's recent decision in the case involving the election of employe representatives among the Pennsylvania shopmen. Mr. Rea had already written Chairman Hooper, on March 19th, that the matter was one which would have to be taken up with the representatives of the employes themselves.

In his reply today, Mr. Rea stated:

1. That conditions had materially changed since the Labor Board rendered its decision in this case or-

dering the Company to hold a new election of employe representatives in the shopcrafts;

2. That since the Board's decision the shopcraft employes themselves have clearly indicated their approval of the elections already held by a majority of them remaining at work when the shopmen's strike was called last July; and at subsequent elections a large majority of the shop employes voted for the continuation of the plan;

3. That System Federation No. 90, the shopcrafts union which called the strike on the Pennsylvania last July because the Company refused to comply with the Labor Board's decision, was repudiated by two-thirds of the shopmen who remained at work and others who have since returned to the service;

4. That on April 6th, 1923, the whole subject of the Pennsylvania's controversy with the Labor Board was taken up by the Management with 775 elected employe representatives of the shopmen, and they unanimously voted that the present plan of employe representation be continued in effect;

5. That the Supreme Court, in its recent decision, in effect approves of the procedure which the Pennsylvania has taken in establishing a successful means of dealing with its employes and eliminating the causes of strikes and interruptions to transportation;

6. That the Pennsylvania plan proved so successful during the severe test of the shopmen's strike that the Company's service was never seriously interfered with, and it actually carried more freight than ordinarily;

7. That in view of the expressed desires of the duly elected representatives of the shopcraft employes, the Company has no choice in the matter except to be governed by the employes' decision.

Mr. Rea's letter is printed on the following pages:

LETTER FROM SAMUEL REA, PRESIDENT PENNSYLVANIA RAILROAD SYSTEM, TO BEN W. HOOPER, CHAIRMAN UNITED STATES RAILROAD LABOR BOARD.

Hon. Ben W. Hooper,
Chairman, U. S. Labor Board,
Chicago, Ill.

April 27th, 1923.

Dear Governor Hooper:

Referring further to your letter of the 14th ult. addressed to me and my reply of the 19th ult., I beg to say that it seems quite proper at this time to allude to the changes in conditions which have taken place since July 26, 1921, when the Board's decision No. 218 was rendered.

When the Shopcraft's Union called a strike on July 1, 1922, on practically all railroads in the United States no strike vote had been taken on the Pennsylvania Railroad on the issues which occasioned the strike on other roads. In other words, the action of the Labor Board in the matter of wages and working conditions had nothing to do with the strike on the Pennsylvania and the Pennsylvania was not having any repair work done in outside shops.

The shopmen on the Pennsylvania, you will recall, were ordered to strike on a ballot taken some eight months prior to July 1, 1922, when the Company refused to comply with the Labor Board's decision No. 218 ordering a new election for the purpose of determining who were the employe representatives, and at a time when the carrier and the Labor Board were amicably arranging for an orderly submission of the question to the Courts.

This, you say, we had the unquestioned right to do, thereby implying that the action of System Federation No. 90 in calling the strike on the Pennsylvania was premature and unjustified.

It is interesting to note that fewer men proportionately went out on strike on the Pennsylvania than on any other road. More than two-thirds of the shop forces remained at work. Not only that but the wages and working conditions in effect were the wages and working conditions which the Labor Board held to be illegal in its decision No. 218. A large proportion of the men who quit in obedience to the strike call of System Federation No. 90 on July 1, 1922, have since returned to the service as new men. The shop forces since early in September, 1922, have been greater than they were before the strike was called.

Notwithstanding the strike of one-third of the shop forces, a greater number of freight cars and more passenger cars and locomotives were repaired in the year 1922 than in the preceding year, and the total cost of repairs was less per month last year than the year before.

During the strike and thereafter—as a matter of fact during the entire year—the Pennsylvania handled a greater volume of freight and its service was never seriously interfered with by the strike. While other roads were more or less crippled by the strike on their lines the Pennsylvania not only handled the traffic which under ordinary circumstances would have come to it, but successfully handled large quantities of traffic which came to it from other lines.

While, as stated above, the strike on the Pennsylvania was not called by System Federation No. 90 because of any action taken by the Railroad Company in pursuance of the decisions of the Labor Board in the matter of wages and working conditions, the members of System Federation No. 90 who did strike automati-

cally left the service of the Company as claimed by the six organizations comprising the Federated Shop Crafts in their notice to the Labor Board and referred to in the Board's resolution adopted July 3, 1922.

In this same connection B. M. Jewell, President of the Railway Employes Department of the American Federation of Labor, is quoted by the New York Tribune as saying:

> "The United States Railroad Labor Board no longer has any jurisdiction over our affairs; our men are not now working for the railroads. From now on our dealings will be with the Railway Executives Association."

Could there have been a clearer declaration of intention on the part of the members of System Federation No. 90 to withdraw from the service of the Company than is manifested by the notice to the Labor Board, the notice conveyed through the public press and their subsequent conduct? Under such conditions System Federation No. 90 certainly has no justifiable grounds for claiming any right to represent the loyal employes who remained in the service, the new employes who after July 1, 1922, came into the service, and the old employes who repudiated System Federation No. 90 and returned to the service.

During the previous year, you will recall, the Pennsylvania had devised by joint action with its loyal employes a successful means of eliminating the cause of strikes and interruption to transportation. System Federation No. 90 was invited to participate in that joint action, but refused to do so. Notwithstanding their refusal, the success of the plan adopted is attested by the failure on the part of System Federation No. 90 to make effective their strike on the Pennsylvania.

The success of the plan is further attested by the fact that at subsequent elections a large majority of the shop employes voted for the continuation of the plan.

The Supreme Court in effect approves of the procedure of the Pennsylvania in this regard when it says:

> "Congress deems it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes, and that its plan is to encourage settlements without strikes first, by conference between the parties."

Again:

> "The purpose of Congress to promote harmonious relations between the managers of railways and their employes is seen in every section of this act, and the importance attached by Congress to conferences between them for this purpose is equally obvious."

And in furtherance of this purpose the Supreme Court says:

> "The statute does not require the Railway Company to recognize or to deal with, or confer with labor unions."

I think you will agree with me that a thorough test of the method adopted by the Company and its employes for the settlement of controversial questions was made and not found wanting. By reason of the harmonious relations established by this method, the Company, as previously stated, was able to meet the abnormal transportation requirements of the public during the strike while at the same time System Federation No. 90 was doing everything in its power to cripple the service.

We therefore earnestly submit that the Labor Board should not advise or encourage any dealings

with an organization whose manifest purpose was to render inefficient in every possible way the transportation service which the Board is at all times charged with protecting and advancing.

While the conduct of our shopcraft employes during the strike furnishes what would seem to be conclusive evidence that the methods which the Company and its employes had jointly devised for the settlement of controversial questions were satisfactory to the great majority of our employes, as stated in my letter of the 19th ult., we felt impelled to call the representatives of the employes into conference for the purpose of ascertaining their attitude toward the whole subject in view of the Supreme Court's decision that the Labor Board had jurisdiction to render advisory opinions, and your inquiry as to what action we propose to take in view of that decision. This we have done.

On the 5th instant we called the General Committeemen, some 35 in number, representing the shopcraft employes, into conference, and read to them the correspondence that had passed between us. We at the same time explained to them that the Supreme Court in its decision did not question our right to negotiate wages, rules and working conditions with the employe representatives selected at the election which the Labor Board condemned, and that the Supreme Court did not hold that the said election was illegal and did not hold that the contracts negotiated by the employe representatives and the Management were void and of no effect.

We requested them to confer among themselves and advise us what reply they desired the Management to make to your letter because the matter was one which seriously concerned them. The Committee after due deliberation unanimously expressed the desire that the present plan of employe representation on the

Pennsylvania System be continued in the same manner as in the past.

While the General Committee felt that they had full authority to act, nevertheless because of the importance of the question, the General Committee decided after discussion to have their local Committees assembled for the purpose of submitting their action to them for their approval or disapproval. Accordingly a general meeting of all Committeemen was held on April 6, 1923, in Philadelphia, and at that meeting 775 Committeemen assembled from all parts of the System for consideration of the question.

That meeting was addressed by Mr. W. W. Atterbury, Vice-President in Charge of Operation, who carefully reviewed the history of the proceedings with the Labor Board and then stated to the meeting that as he saw it there were three courses open to us suggested by your letter, and stated them as follows: First, we can put out a referendum to our employes asking whether they want System Federation No. 90 to represent them or whether they desire the Committee now representing them to continue to represent them, or second, we can put out a referendum to the employes asking them the plain question, Is the present system of employe representation satisfactory? or, third, we can conform to the action of the General Committee which met a few days ago.

It was explained to the meeting that this was a question which the men themselves should settle and thereafter the representatives of the Management withdrew. Later the representatives of the Management were again called into conference with the 775 Committeemen and were informed that the action of the General Committee in expressing the desire that the present plan of employe representation be continued in the same manner as in the past was unanimously approved.

Having submitted the question at issue to the duly elected representatives of the shopcraft employes for their decision and determination, in view of our repeated assertions that we propose to let our employes have a voice in determining the rules and regulations under which they should work, and having obtained from them a unanimous expression that they desire that we continue with the present plan of employe representation without submitting to a vote the question of choice as between representation by System Federation No. 90 and representation by the Committees as now constituted and *elected by employes themselves*, we have no choice in the matter except to be governed by the expressed wishes of our employes.

Very truly yours,

(Signed) SAMUEL REA,
President.

Prior to sending the above letter, Mr. Rea sent on March 19, 1923, the following letter acknowledging Chairman Hooper's inquiry as to what action the Company proposed to take in view of the Supreme Court's decision:

March 19, 1923.

HON. BEN W. HOOPER,
Chairman, United States Railroad Labor Board,
608 South Dearborn Street, Chicago, Ill.

DEAR SIR:

I received your letter of March 14th in the matter of the issues involved in the case of The Pennsylvania Railroad Company vs. the United States Railroad Labor Board, and I fully appreciate the spirit in which it was written and your expressed desire to be helpful in the premises.

Mr. Seneff has told me of the interview which he and Mr. Whiter had with you, and from his report I infer that you are mindful of the situation which now

prevails and the greatly changed conditions existing on our System since Decision No. 218 was rendered by your Board.

The matter is of such grave importance to our employes that we feel impelled to call them into conference before formally replying to your letter for the purpose of ascertaining their attitude at this time towards this whole subject. This we shall do as soon as it can conveniently be done, and thereafter we shall communicate with you further.

Very truly yours,

(Signed) SAMUEL REA,
President.

EXHIBIT "WW."
(Filed December 14, 1923.)

OFFICIAL BALLOT.

THE PENNSYLVANIA SYSTEM MISCELLANEOUS FORCES' ASSOCIATION

OF THE

OPERATING DEPARTMENT—EASTERN REGION.

Election of Representatives on the Philadelphia Terminal Division May 15, 1922.

Important Instructions! Read Carefully.

Indicate your preference by placing an (X) before the name (or names) of the candidate (or candidates) of your choice in the column provided for same, and after the "yes" or "no" on the question of the proposed change in your By-Laws.

Make no other mark or marks on this ballot.

Place ballot in small envelope marked "Official Ballot" and seal it; then place this envelope in large addressed envelope and seal it.

Write your name, occupation and location in space provided in upper left-hand corner of the large envelope, and mail your ballot to the Regional Joint Committee Miscellaneous Forces, Room 53, Broad Street Station, Philadelphia, Pa., not later than 11.59 P. M., Eastern Standard Time, Monday, May 15, 1922.

Two or more ballots in one envelope, or two or more ballots from any one employe will not be counted.

This ballot is *secret*, the large envelope being checked against the rosters and poll list, removed and destroyed by the tellers, prior to the opening of the smaller envelope containing your ballot.

.....

(Detach along this line.)

Election of Representatives on the Philadelphia Terminal Division May 15, 1922.

Vote for two. If this number is exceeded, the ballot shall be void.

Mark (x) Here	*Name*	*Occupation*	*Location*
	Bower, Ralph M.	Clerk	Ticket Office, Broad St. Sta., Philadelphia, Pa.
	Rudolph, Joseph R.	Clerk	Walnut Street Wharf, Philadelphia, Pa.

Vote "yes" or "no" on the following question:

Shall Article XI, of the By-Laws of this Association be changed to read as follows:

ARTICLE XI.

AMENDMENTS.

SECTION 1. Amendments to these By-Laws may be made by the Regional Joint Committee after thirty (30) days' notice of the proposed amendments has been given all members of said committee.

SECTION 2. Amendments to these By-Laws may be proposed by any member of the Regional Joint Committee, by the Regional Committee, any General Committee or Local Committee or by petition of any fifty (50) members of this Association to the Regional Joint Committee.

Yes—— No——

OPINION SUR TRIAL HEARING ON BILL, ANSWER AND PROOFS.

(Filed December 21, 1923.)

DICKINSON, *J.*

This cause was called for hearing on a motion for a preliminary injunction. At the conclusion of the hearing it was agreed by counsel that the plaintiff should have of record all the exhibits referred to in the bill and certain other exhibits brought into court, which should be regarded as proofs by the plaintiff, and that the case should be determined as on final hearing upon bill, answer and proofs, the latter consisting of the plaintiff's exhibits.

The cause behind this case is of the greatest importance because it has part in the relations of employed and employees, and questions are raised, the answers to which may carry the greatest consequences because they affect not merely the relations of large and important classes but also because every one has an interest in those relations being harmonious. It thus becomes worthy of the fullest discussion. This is the due also of the counsel who have argued it with fulness, clearness and considerateness.

The evidentiary facts of the case as mere facts are not in dispute, and yet, as is almost always the case, where controversy exists not over the facts but

over the inference to be drawn from those facts, or in other words, over the ultimate fact findings, adequate discussion of them is always long because they present so many different phases. Newton's famous apple fell from the tree. That was of no consequence in itself nor would it take long to state the fact, but the discussion of the why and wherefore of its fall has been continued to this day and has just taken a fresh start. It has been said that no more than a dozen minds in the world have the capacity to even follow the development of the theory of what gravitation is, and perhaps not more understand the labor problem. Those outside the ranks of the chosen twelve are usually content to take refuge in the oracular judgment (slightly amended) of a famous character in Silas Marner: "You are both right and both wrong as peoples always is."

After several vain attempts to keep the discussion within manageable limits, we have concluded to restrict this opinion to a statement of the questions presented and the conclusions reached, omitting the more discursive statement of what has led us to these conclusions, content with the knowledge that no one would read it anyhow unless he was paid to do so.

The plaintiff's assertion of a cause of action is based upon the charge of a conspiracy. We thus start with the well worn definition that the defendant's objective must have been an unlawful thing, or if lawful, the means of its accomplishment must be unlawful. This, however, is a false start because we must go back of this. The cause had its beginning as litigation in proceedings before the Labor Board. That tribunal gave the plaintiff all which it was within its power to give. A Court can do no more. No clear and fair minded man would expect more. It has been authoritatively ruled that the Labor Board (if the analogue is acceptable) has authority to render a judg-

ment but has no power to issue execution. Often in determining what questions in a cause are presented for decision, it is an aid to learn what are not to be decided. The question would suggest itself at once is the plaintiff invoking the aid of the Court to enforce a judgment of the Labor Board? There is no such question before us because the very capable counsel for plaintiff disclaims all thought of asking us to do this as they frankly admit such aid cannot be given. We have thus made one step. The next step is to inquire of the plaintiff what it is they do ask. The answer is that Congress has provided the machinery for the settlement of all labor disputes (affecting Interstate Commerce) through a reference of them to the Labor Board, and that the defendant has conspired to thwart this declared purpose of Congress. Stated more fully, Congress, by a series of enactments, including the Interstate Commerce, the Transportation and the Labor Board Statutes, has declared a policy of the law, the carrying out of which the defendants have conspired together to obstruct, and the code pronounces any conspiracy to obstruct a policy of the law to be unlawful. The right to relief is thus disclosed, and we have made a start.

It is always well, however, in starting on any voyage to know for what port we are bound. To learn this we must again return to the starting point.

The Labor Board is a tribunal differing widely and radicaly from a court. It exercises in a measure judicial functions, and yet the questions with which it concerns itself are not justiciable as the Courts define such questions. In at least one respect the Labor Board has a far broader and wider jurisdiction than any court. There is a truth, which is worthy of statement, that there is such a thing as something which a man ought to have in the popular sense of right and justice which yet is far beyond that to which he has a

legal right. The distinction is sometimes expressed in the phrases natural justice and legal justice. The effort, of course, is to keep them in consonance but it cannot always be done. A Court again, of course, is limited and restricted to the award of legal, or what is the same thing, equitable rights. It can grant to a litigant no more than this, although the individual Judge or Judges who compose the court may think on other than legal grounds he ought to have much more. The Labor Board, on the other hand, is under no such limitations or restrictions. It may take into its consideration everything, whether of a legal, ethical, economic, social, civic, humanitarian or altruistic value. In other words, it does not give to the parties before it merely that to which they have a legal right, nor require of them only what they are legally bound to do, but it calls upon each to yield to the other all which, with everything taken into consideration, ought to be yielded, regardless of the strict legal rights of either. We all recognize in all the relations of life claims upon us far in excess of any mere legal claims. Apply this to the special problem with which the Labor Board has to do—disputes between employed and employer. All parties would without doubt admit that they ought in this broad sense to do everything they reasonably could be asked to do to end the dispute by an agreement. This, however, is not always possible, because persons may honestly differ without blame to either, and most surely they may differ after one of them has made every concession which any one would ask of him. Congress has, because of the interest of the public in such disputes, gone one step further and declared that if they cannot or will not adjust the dispute that then the Labor Board shall adjust it for them by adopting as the basis for a settlement anything which the board deems to be fair and reasonable.

It is too clear for words that no Court could make such an award. The Labor Board, on the other hand, has far less power than a Court. A Court, although it can award to a litigant only that to which he has a legal right, has the power to see to it (within practicable limits), that he gets what is awarded him. The Labor Board has no such power. The judgment it may render may be acceptable to neither party but each has the legal right to accept it or refuse to follow it. If the parties refuse acquiescence all that the board can then do is to give publicity to its ruling, leaving the parties to their willingness to adjust the disputes under the guidance and perhaps the stress of public opinion, influenced, or it may be aroused, by the opinion of the board.

The difference between the two tribunals may be summed up in the phrase that the aim of the Labor Board is high but it may miss its mark; the aim of a Court is much nearer the earth but it hits the bull's eye almost every time.

There is another feature which should be kept before us. Congress had in mind the usal precursors of a strike in the refusal of one or both parties to confer or their failure to agree after conference. It also had in mind that the employes might all belong to a labor organization, or to several different unions, or all might be unorganized, or that some be organized and some not. There was likewise recognition that the number of employes would forbid a conference except through representatives. Provision in consequence was for representatives of all the above classes to meet in conference, and if they do not agree, further provision was made for a reference of the dispute to the Labor Board.

This brings to the surface what may be called the jurisdictional facts; the necessity of authority in some

one to decide upon the existence of these facts; the necessity of a hearing and the appearance of all parties through these representatives before the board in order that it might function, and the question of the validity of any election at which representatives were chosen, or in other words, who were representatives.

The defendant company from the beginning has maintained and still maintains a position which may be summed up as follows:

There is and has been no dispute of which the Labor Board could take cognizance in that the relations of the company with its employes are harmonious, and that the wage scale and working conditions are such as are acceptable to both the company and its employes. To promote this harmony and assure its continuance, the company has always been willing to consult its employes and confer with them on any subject affecting their employment. The only practicable method of doing this is through a conference of representatives. Recognizing that because of prevailing living conditions and for other reasons a readjustment of wages and working rules might be desirable, the company when control of its property was returned to it after Government administration was ended, chose its conferees and arranged for a plebiscite so that conferees to represent the employes might likewise be chosen. Such an election was held and following it a conference was had through which all matters affecting wages and working conditions were adjusted to the satisfaction of all.

The position of the plaintiffs is in sharp conflict with the general tenor of this statement and its details. In their view there is a wage dispute, which calls for adjustment through a finding of the Labor Board, and that the asserted settlement, through a conference, was such only in form as no real representatives of the employes were a party to it, and further

that the machinery of election set up by the company was a mere pretense to hide the real purpose, which was not to submit the decision of the dispute to the arbitrament of the Labor Board and thus to escape the consequence of a finding by the Board.

We may interpose here a further observation. It has been authoritatively ruled for us that it was within the province and lawful power of the Board to determine the existence of the jurisdictional facts upon which its right to function rested, and that this power included the decision of who were the representatives of the parties to the dispute thus of necessity drawing into the cognizance of the board the validity of the election held. It has likewise been ruled that it has been given to no Court to sit in review of the findings made by the Board acting within the powers conferred by Congress. This is a good reason for us to refrain from adding any fact finding other than the one which concerns the question submitted to us. This fact is that the Labor Board sustained the plaintiff in every issue raised before it.

The Questions Here Raised.

If the concept which the plaintiff has of the policy of the law was the true concept, we could easily follow the argument of their counsel to its conclusion. In a sense and a real sense it is the true concept but not in the sense which would lead to the conclusion drawn. The plaintiff's concept is that Congress has declared the policy of the law to be that labor problems which concern Interstate Commerce shall be adjusted at a conference between representatives of the employer and of the employed, and failing this shall be referred to the Labor Board, whose decisions shall be accepted by the parties.

We have said that acceptance of this as the true concept of what the policy of the law is carries with it the plaintiff's right to the relief for which they pray, because the Labor Board has fully performed its duty but its action has been in part frustrated by the refusal of the defendant company to (as we have found the fact to be) submit itself to the jurisdiction of the board and to accept of its arbitrament, thus bringing about the defeat of this policy of the law, there being no denial of the further fact that all the defendants had part in what would in this view be an unlawful conspiracy.

The broad inquiry thus becomes one into the correctness of this statement of what is the policy of the law and the question to be decided likewise becomes whether a Court should by injunctive process command the defendant company to withdraw from its attitude of unwillingness to submit itself to the arbitrament of the Labor Board, or, what is the same thing, by like process enjoin the defendants from the continuance of all acts through and by which the company had thus far made its resistance to the control of the board effective.

DISCUSSION.

Plaintiff's concept of the policy of the law ignores the distinction between motive and purpose. We have no doubt that because of the public concern with labor disputes, it was the purpose of Congress to lend every aid which it was thought to be wise to extend, toward the settlement of such disputes, and we entertain as little doubt that those who voted for the bill, which constituted the Labor Board, did so in the hope and perhaps also in the expectation that all parties concerned would accept and yield to all decisions rendered by the board, whatever the sacrifice of their legal rights.

This gives us the legislative motive. It is just as clear, however, that Congress did not exact obedience to the rulings but left all parties in the full enjoyment of all their legal rights, including the right to accept or reject. As such refusal was the objective of the charged conspiracy, it follows that there was no conspiracy to do an unlawful thing. Had the attitude of the parties been reversed and the defendant company had wanted the assistance of the board (as it might and may still yet want it), the ways and means adopted for the accomplishment of its wishes, or in other words, its acts and conduct would have been precisely what they have been, but no one would have thought of charging them with an unlawful conspiracy because they were doing a lawful thing in an unlawful way. There would have been doubtless even then the theoretical possibility that one or more of the specific acts done were unlawful, but into this we need not go.

The plain truth of the whole matter would seem to be that the only legal right which the plaintiff has is a right to an expression of the opinion of the Labor Board that under all the circumstances and considerations affecting the subject matter they ought to have more than the strictly legal rights which belong to them, although even this does not belong to these plaintiffs *eo nomine* but to the employes of the defendant company. This right has already been given them by the award of the Labor Board, and no Court can grant them more than their legal rights.

We have given one mode of statement of what the real question before us is. The different modes of statement possible are limitless in number. We will venture upon one more.

We know, because it had been so ruled, that the Labor Board cannot impose its views upon the defendant company so as to make acceptance compul-

sory inasmuch as there is no legal obligation on the defendant company to accept. We know, in the same way, that no Court can, for the same reason, impose such obligation upon the defendant company, and we are not asked to do this.

The proposition now, however, advanced is that the defendant company is guilty of an unlawful act in not accepting the views of the board respecting what the defendant company should do and all the defendants combined in committing the acts which were done in furtherance of such unlawful purpose. Our difficulty is in recognizing the presence of the element either of lawfulness or unlawfulness (otherwise than in its negative form) in what the defendant did or refused to do or in its every act or in any part of its conduct. We do recognize that there is the broader question of whether (regardless of its legal rights or obligations) the defendant company was right or wrong. The Labor Board has passed upon this and, if the analogue is helpful, there has been an appeal taken to another tribunal, the Court of Public Opinion. All which concerns us is that an appeal to this Court is not the legal right of either party.

ORDER.

The decree filed herewith is accordingly made, dismissing the bill, with costs, etc.

DECREE.

(Filed December 21, 1923.)

This case was heard by agreement of counsel filed of record upon bill, answer and proofs, consisting of the plaintiff's exhibits filed of record, and upon consideration thereof

IT IS ORDERED, ADJUDGED AND DECREED that the bill be and the same is hereby dismissed, and that defendants recover from plaintiff their costs herein expended.

By THE COURT,
(Sgd.) DICKINSON,
Judge.

Approved as to form:
(Sgd.) HENRY T. HUNT,
Attorney for Plaintif.
(Sgd.) J. HAMPTON BARNES,
Attorney for Defendants.

PETITION FOR APPEAL AND ORDER ALLOWING WRIT.
(Filed December 21, 1923.)

To the Honorable the Judges of the said Court:

The Pennsylvania System, Board of Adjustment, conceiving itself to be aggrieved by the decree entered on December 21, 1923, hereby prays for an allowance of appeal therefrom, for the reasons specified in the assignment of errors filed herewith, and further prays that said appeal be allowed, and that a transcript of the record proceedings and papers upon which said judgment was entered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Third Circuit.

(Sgd.) ROBERT J. STERRETT,
(Sgd.) HENRY T. HUNT,
Attorneys for Plaintif.

Philadelphia, Pa., December 21, 1923.

And now, this twenty-first day of December, 1923, it is ordered that the foregoing petition for an appeal be allowed as prayed. Security to be entered in sum of $200.

By THE COURT,
DICKINSON,
Judge.

Attest:
(Sgd.) GEORGE BRODBECK,
Clerk.

ASSIGNMENTS OF ERROR.
(Filed December 21, 1923.)

And now comes Pennsylvania System Board of Adjustment, plaintiff, and, having prayed for an appeal from the decree entered in favor of the defendant with costs, says that:

1. The learned Court erred in entering a decree dismissing the bill with costs.

2. The learned Court erred in not granting the injunction as prayed for.

(Sgd.) ROBERT J. STERRETT,
(Sgd.) HENRY T. HUNT,
Attorneys for Plaintiff.

Philadelphia, Pa., December 21, 1923.

PRÆCIPE FOR TRANSCRIPT OF RECORD.
(Filed December 21, 1923.)

Sir:

In making up the transcript of record in the above-entitled cause, include the following papers and no others:

Docket entries,
Bill of complaint,
Answer,
Exhibits as per letter of December 21, 1923, filed,
Opinion,
Decree,
Petition for appeal and order allowing same,
Assignments of error,
Clerk's certificate.

(Sgd.) ROBERT J. STERRETT,
(Sgd.) HENRY T. HUNT,
Attorneys for Plaintiff.

To the Clerk, Philadelphia, Pa.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*

I, GEORGE BRODBECK, clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings, in the case of The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, v. The Pennsylvania Railroad Company, *et al.*, No. 2867, September Term, 1923, as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above-entitled cause is to include, now remaining among the records of the said court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia this twenty-eighth day of January, in the year of our Lord one thousand nine hundred and twenty-four and in the one hundred and forty-eighth year of the Independence of the United States.

(Seal)

GEORGE BRODBECK,
Clerk.

In United States Circuit Court of Appeals for the Third Circuit, March Term, 1924

No. 3118 (List No. 4)

Penna. System Board of Adjustment, Brotherhood of Rwy., etc., Clerks, Appellant,

vs.

Pennsylvania Railroad Co., et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Order Assigning Hon. Jos. L. Bodine for Argument—Filed April 8, 1924

And now, to wit, this eighth day of April, A. D. 1924, it is ordered that Hon. Joseph L. Bodine, District Judge for the District of New Jersey, be, and he is hereby, assigned to sit in above case in order to make a full court.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Opinion—Filed July 14, 1924

And afterwards, to wit, on the eighth day of April, 1924, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges and Honorable Joseph L. Bodine District Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the fourteenth day of July, 1924, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[Title omitted]

Woolley, Circuit Judge:

These cases concern controversies between a railroad employer and its employees and call for an interpretation of Title III of the Transportation Act of 1920. 41 Stat. 456, 469. Beyond this it is impos-

sible to state the questions involved without first stating the facts from which they arose.

The two cases are against the same carrier, the Pennsylvania Railroad Company, and its officials. The first was instituted by bill in equity filed by the Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, setting forth grievances peculiar to the crafts indicated by the title of the complainant labor union; the second was instituted by a similar bill filed by the Pennsylvania Railroad System and Allied Lines Federation No. 90, and certain persons as individuals and officials, stating grievances peculiar to the crafts indicated by the title of this complainant labor union; both asserting rights conferred by the Transportation Act, averring violations thereof by the Railroad Company and its officials, and praying that the Railroad Company and its officials be enjoined from further acting to their injury.

The law on which the two bills are based is the same and the facts on which they are rested differ only in those details which arise from differences in the crafts and their labor organizations. As the action brought by the Pennsylvania Railroad System and Allied Lines Federation No. 90 (to which for convenience we shall hereafter refer as System Federation No. 90) embraces all questions raised in the action brought by the Pennsylvania System Board of Adjustment of the Brotherhood of Railroad and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as Brotherhood of Clerks) and embraces one or two more, we shall, in an effort to keep this opinion within reasonable bounds, recite only the facts of the former case and then only those facts averred in more than one hundred printed pages of the bill which we think are pertinent. They are as follows:

Prior to December 28, 1917, the Pennsylvania Railroad Company (hereinafter referred to as the "Company") operated railroads in twelve states under what was commonly known as the "Pennsylvania System." The Company employed a large number of men in shop or mechanical work in and about the repair and maintenance of locomotives, cars, and other equipment and also a large number as clerks, freight handlers, express and station employees. Many men of all crafts were members of labor unions and many were not. Thorough unionization of these crafts was resisted by the Company which, being antagonistic to labor organizations generally, refused to recognize and deal with their unions, although it recognized and, under collective agreements, dealt with four other labor organizations, namely: the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and the Brotherhood of Railway Trainmen, known collectively as the "Big Four."

On December 28, 1917, the President of the United States, by authority of the Act of Congress of August 29, 1916, c. 418, 39 Stat. 619, 645, took over the railroads of the country, including those of the Pennsylvania System, and operated them through the Director General of Railroads. On February 21, 1918, the United

States Railroad Administration issued an order, known as General Order N. 8, which prohibited discrimination against employees because of membership or non-membership in labor organizations. In consequence of this order local unions and lodges of the national organizations of shopcrafts of the Company became active and, in July, 1918, their representatives met at Altoona and formed the Pennsylvania Railroad System and Allied Lines Federation No. 90, one of the complainants. This relatively local labor organization became affiliated with the national organization of the American Federation of Labor. A full statement of the relation of these major and minor organizations is unimportant except to note that the constitution and by-laws of System Federation No. 90 showed an interdependence in action and provided against strikes by employees of any member craft unless authorized by that organization on a referendum vote and sanction by the American Federation of Labor. In the spring and summer of 1918, the war being on, the Railroad Administration issued several general orders revising and increasing the wages of shopcraft employees, making the rates uniform throughout the country, establishing definite and uniform classification and discontinuing the system of piecework. Thereafter the Railroad Administration entered into an agreement with the national body of railroad employees of the classes here in question, represented by the American Federation of Labor and its affiliated organizations, including System Federation No. 90. This agreement, which because of its scope became known as the "National Agreement," further increased wages and dealt generally with conditions of labor. About February 1, 1920, the war being over, shop-craft employees and employees of other classes presented to the Railroad Administration a request for a still further increase of wages and for further modifications of the National Agreement concerning working conditions. With this request pending and undetermined, the Congress passed the Transportation Act which, being approved by the President, became a law on February 28, 1920. Under its terms federal control of railroads ended on March 1, 1920, and on that day all railroads, including those of the Pennsylvania System, were returned to their owners.

In order properly to understand the remaining facts of these cases it will be necessary to stop at this point and briefly review the pertinent provisions of the Federal Transportation Act—holding in mind the existence of the National Agreement and the pending demand for increase of wages.

The portion of the Act here in question is Title III, which provides for the settlement of disputes between railroad companies engaged in interstate commerce and their employees. Following closely the summary of the Act made in the report of the case of the Pennsylvania Railroad Company vs. United States Railroad Labor Board, 261 U. S. 72, Section 301 makes it the duty of carriers and their employees to exert every reasonable effort to avoid interruption to the operation of an interstate commerce carrier because of disputes between them, and further provides that such disputes shall be considered and, if possible, decided "in conference between representatives designated and authorized so to confer by the carriers, or the

employees or subordinate officials thereof, directly interested in the dispute." The section concludes: "If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such disputes."

Section 302 provides for the establishment of Railroad Boards of Labor Adjustment by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees of the same. No such Boards of Adjustment were established when the controversy with System Federation No. 90 arose.

Section 303 provides for hearing and decision by such Boards of Adjustment of any dispute involving only matters not decided as provided in Section 301.

Sections 304, 305 and 306 provide for the appointment and organization of a "Railroad Labor Board" composed of nine members, three from a group representing labor, three from a group representing the carriers, and three from a group representing the public.

Section 307 (a) provides that when a Labor Adjustment Board under Section 303 has not, within a reasonable time, reached a decision of a dispute submitted to it, or when the appropriate adjustment board has not been organized under Section 302, the Railroad Labor Board "(1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301." Paragraph (b) of the same section provides for a hearing and decision of disputes over wages and paragraph (c) requires in a decision by the Labor Board the concurrence of five of the nine members, of whom, in the case of wage disputes, a member of the Public Group must be one. This paragraph further provides that, "All decisions of the Labor Board * * * shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the (Interstate Commerce) Commission, and shall be given further publicity in such manner as the Labor Board may determine." Paragraph (d) requires that decision of the Labor Board shall establish standards of working conditions which in its opinion are just and reasonable.

Section 308 prescribes other duties and powers of the Labor Board among which is that of making "regulations necessary for the efficient execution of the functions vested in it by this title."

Section 313 reads as follows:

"The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all

persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine."

Returning to the situation as it existed at the time of the enactment of the Transportation Act when a demand for increase of wages and change of working conditions had but recently been made by carrier employees, it appears that between that date and the date of the organization of the Labor Board many conferences looking to the settlement of the dispute were held between heads of labor organizations, signatories to the National Agreement, and representatives of the railroads. Conferences between the Pennsylvania Railroad Company and its employees were not successful. When the Labor Board was organized on April 15, 1920, it assumed jurisdiction of these pending disputes and proceeded to deal with them. On July 20, 1920, it rendered a decision upon the wage dispute but postponed decision upon the dispute as to rules and working conditions until April 14, 1921, when it decided that such rules and working conditions as were fixed by the National Agreement with respect to all railroads and had been continued as a modus vivendi should end July 1, 1921, and remanded the controversy to the carriers and their employees, calling upon them respectively to designate representatives for conference and asking them to keep the Board advised of their progress. The Labor Board accompanied this decision, known as Decision No. 119, with a statement of principles which thereafter it intended to follow in the consideration and settlement of disputes between carriers and their employees. Those here pertinent are Principles 5, 7 and 15. They read as follows:

"5. The right of such lawful organizations to act toward lawful objects through representatives of its own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management.

"7. The right of employees to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. The right of participation shall be deemed adequately complied with, if and when the representatives of a majority of the employees of each of the several classes directly affected shall have concurred with the management.

"15. The majority of any craft or class of employees shall have the right to determine what organizations shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

In view of the approaching end of the National Agreement and in response to the general mandate of the Labor Board that carrier employers and employees compose their differences, representatives

of the Company and of System Federation No. 90 met in Philadelphia on May 24, 1921. At this meeting the officials of System Federation No. 90 stated that their organization comprised a majority of the employees of the Pennsylvania System in the crafts named and that they had come as their representatives prepared to confer and agree with the Company in accordance with Decision No. 119 of the Labor Board. The officials of the Company questioned whether System Federation No. 90 spoke for a majority of its shop employees and for lack of proof refused to confer with its representatives. Moreover, the Company informed the representatives of System Federation No. 90 that, acting in pursuance of Decision No. 119 of the Labor Board, it would recognize organizations of its shopcraft employees but that the representatives of such organizations must be individuals actually in the employ of the Company and at work at the time in its service, and indicated that in order to be assured of this and of the authority of labor spokesmen, it would send out a formal ballot to these employees asking them to name thereon their conference representatives. Just here is the center of the controversy. The officials of the Company showed the officials of System Federation No. 90 the ballot which it intended to submit to its shopcraft employees for the selection of representatives to attend a conference to adjust the dispute. It appeared from this ballot that the Company proposed to divide these employees by Superintendent Divisions and members of each craft in each division were to vote for and elect three of their number to represent them in disputes arising in their division. If a dispute of a wider character should arise, provision was made for regional committees whose members should be selected by the division representatives previously elected by the employees of the several crafts. (All this involves matters of detail of which nothing more need be stated here than, when put into practice, the plan would carry out the purpose of the Company to limit conference representatives of its employees to natural persons and to those actually in its employ and at work.) The ballot also disclosed that employees on strike would not be allowed to vote. The representatives of System Federation No. 90 objected to this ballot because it was not in accordance with their understanding of Principles 5, 7 and 15 announced by the Labor Board in that it made no provision for representation of employees by a labor organization and excluded from conference everyone not in the Company's employ, that is, it excluded outside representation. On this question the opposing parties broke, with the result that the Company and System Federation No. 90 each sent out ballots. The Federation advised its members not to vote the Company's ballot and the Company announced it would not recognized the Federation's ballot. Both parties actively and bitterly participated in the election that followed. The return showed that 5,236 employees actually at work voted the Company's ballot and 37,245 employees—embracing men at work and men on strike—voted the Federation's ballot. In due course the persons chosen by employees voting the Company's ballot met the Company's representatives in conference and formally entered into an agreement respecting rules and working conditions.

The Company regarded this as an end to the matter. System Federation No. 90, however, promptly filed with the Labor Board a complaint against the Company under Section 307 of the Transportation Act. The Company appeared, and, after hearing, the Labor Board decided (Decision No. 218) that neither form of the ballots sent out by the parties was proper, that the labor representatives chosen on the Company's ballot were not lawful representatives and that, in consequence, the rules and working conditions agreed upon by them were void. The Labor Board then ordered a new election for which it prescribed rules and the form of ballot, specifying that labor organizations as well as individuals might be voted for as representatives of the employees. The Company refused to accept Decision No. 218 or to carry out its provisions and also refused to cancel the election already held or to abrogate the agreement it had entered into with its employees as a result thereof. The Company petitioned the Labor Board to vacate its order on the ground that there was no dispute before it of which the Transportation Act gave it jurisdiction. Upon its refusal the Company filed a bill in equity against the Labor Board and its members in the District Court of the United States for the Northern District of Illinois praying an injunction against them for their alleged unlawful proceeding under the Act and especially against their threatened official publication under Section 313 that the Company had violated the Board's decision. A preliminary injunction was granted. 282 Fed. 693. On appeal by the Labor Board the United States Circuit Court of Appeals for the Seventh Circuit vacated the injunction and directed a dismissal of the bill. 282 Fed. 701. Thereupon the Company took an appeal to the Supreme Court which, on February 19, 1923, interpreting the Act and deciding matters to which we shall advert later, affirmed the decree of the Circuit Court of Appeals. 261 U. S. 72. The Labor Board then, of its own motion, again requested the Company to comply with its Decision No. 218. On the Company's refusal it rendered Decision No. 1829 in which it held that the Pennsylvania Railroad Company "has violated decision No. 218 of the board, after the Supreme Court of the United States had upheld the board's right to render said decision, and has thereby denied to its shop employees essential rights as laboring men to which Congress has declared them entitled."

System Federation No. 90 formally informed the Company of the readiness of its members to resume work upon the terms and conditions established by the Labor Board. The Company refused this tender and adhered, and still adheres, to the agreement made with representatives of its employees elected in the manner indicated. These actions followed.

In concluding their bill the complainants contend that all "furloughed employees," that is, employees on strike, who were refused re-employment in accordance with their seniority rights, and employees "who were discharged by the Company for refusing to waive their rights under the Transportation Act," are entitled to recover damages for loss of employment. In addition they show that a large number of the Company's employees, members of System

Federation No. 90, did not strike in the summer of 1921 but continued at work under the wages, rules and conditions established by the Company's alleged unlawful agreement with representatives of its employees and contend that they are entitled to be paid by the Company the difference between the amounts actually received by them and the amount they should have received at the rate of wages in force on the first of July, 1921. On the facts and contentions thus summarized the complainants pray for a decree restraining the defendant (Pennsylvania Railroad Company) from enforcing the provisions of the agreement with respect to wages and working conditions made between it and its employees on the vote taken; from enforcing any change in wages and working rules as they existed on June 30, 1921, that is, as they existed under the National Agreement; from continuing to deal with persons chosen on Company's ballots as representatives of the employees engaged in mechanical work; from financing, interfering with, directing and controlling the organizations of the Company's employees for the purposes set forth in the Transportation Act, and from refusing to confer and deal with System Federation No. 90 as the organization representing the great majority of the Company's employees engaged in such work. In addition the complainants ask for a decree for an accounting of damages sustained by members of System Federation No. 90 upon the grounds previously stated.

The theory of these cases is both negative and affirmative. It is negative in the sense that the complainants do not expressly ask the court to enforce any of the decisions which the Labor Board made in this dispute. Obviously, this is for the reason that the Supreme Court, in Pennsylvania Railroad Company vs. United States Railroad Labor Board, 261 U. S. 72, decided that orders of the board are not enforcible by the courts. Going a step further, they say their position is entirely independent of Decisions Nos. 119 and 218 of the Labor Board prescribing rules and form of ballot for choice of representatives by the employees, and of Decision No. 1829 declaring that the Company had violated its decision, although the practical effect of a decree granting the prayers of their bills would be the enforcement of these orders. The theory is affirmative in the sense that the complainants stand upon what they describe as their "civil and statutory rights," and, averring a conspiracy to deprive them of these rights, they invoke the injunctive remedy of a court of equity, in the absence of an adequate remedy at law, to restrain the respondents from continuing and completing such conspiracy to their injury.

From the length and intensity of the conflict indicated by our statement, as well as from the many positions taken and matters argued in the briefs, we find that, after all, the issues narrow to a single question—What are the civil and statutory rights of the complainants in the premises? This is the true question involved and upon its answer all others turn.

We do not understand just what the complainants mean by their "civil" rights. If they mean such as are accorded labor by general

law,—the right lawfully to organize, United Mine Workers vs. Coronado Coal Co., 259 U. S. 344, the right to bargain collectively, the right to strike,—no invasion of such rights is shown and, accordingly, none is here in question. Moreover, the complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights. To these alone we shall address discussion.

It is evident that in enacting the Transportation Act of 1920, and, through it, affording means by which to prevent interruption of interstate commerce by labor disputes and strikes, the Congress had the public interest first in mind. It was more concerned in protecting the public than in conferring rights upon railroad employers and employees. To this end it set up machinery which these contending forces could invoke to compose their differences, or which could be invoked against them. This machinery was novel in character and was intended to function not by ordinary processes but by the force of public opinion. It did not disturb many of the rights which theretofore admittedly belonged to an interstate carrier and to its employees. The carrier's right to deal with individual representatives of its employees remained. The right of employees, who are members of labor unions, to select their own conference representatives without the right of their employer to restrict their selection to its own employees and exclude officers of labor unions was not abridged. Moreover, the "statute does not require (the carrier) to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees." Pennsylvania Railroad Company vs. Labor Board, 261 U. S. 72, 84. With such rights preserved to these opposing forces and with no new rights of the kind here in issue expressly given them, the statute imposes certain duties and confers certain powers upon the Labor Board. One of these is the power to decide a labor dispute between a carrier employer and its employees. This power of decision, however, does not carry with it a power of execution. Obedience to decisions of the Labor Board is not compulsory; enforcement of its decisions rests solely upon public opinion marshalled on publication of the conduct of the offending party. This is as true of interlocutory decisions as of final decisions. Though a decision be in favor of employees, we can not find anything in the statute which gives them a right to its enforcement by the courts.

Having power to decide a dispute which has either been submitted to it or of which it has taken control of its own motion, the Labor Board also has the power to decide beforehand who may properly represent the parties and to prescribe rules by which to ascertain their will in this regard. This power cannot be defeated by the non-action of a party; nor can its power to proceed to final decision be defeated by refusal of either party to obey its order. The action of the Labor

Board by Decision No. 218 in finding the election of representatives by the Company's employees in the cases at bar void and prescribing a method and form of ballot for a new election was held by the Supreme Court to be within its power. Pennsylvania Railroad Company vs. Labor Board, 261 U. S. 72, 83. But this was the assertion of a right which the statute confers upon the Labor Board, not upon the parties to the dispute. A right of employer or employees to insist that the other proceed to a hearing pursuant to such rules as the Labor Board may have prescribed is not conferred upon either party to a dispute unless the statute makes it compulsory upon them. If compulsory, and if, as in this instance, the employer should refuse to obey the rules which the Labor Board has prescribed for an election of representatives and otherwise should fail to submit itself to the Labor Board, then by implication the statute might raise a right in the employees to have the dispute heard in the manner the Labor Board has provided and conceivably, they might obtain enforcement of that right by legal process. But we find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employees or further to contest the matter before the Labor Board. Though liable to such punishment as public opinion may inflict, the employer (and likewise, in a reverse situation, the employees) may, for any reason, or no reason at all, decline further to engage in the dispute. As obedience to the mandate of Decision No. 218 of the Labor Board respecting a new election of representatives was not compulsory upon the Company, its refusal to obey the decision violated no legal or equitable rights of the complaining employees. This is an instance where the machinery which the Congress set up did not work through to final decision and resulted in no punishment except that of public opinion directed against the Company by the announcement of the Labor Board's Decision No. 1829. As the Transportation Act of 1920 makes no provision for a situation where one of the parties defaults, it does not provide the other party (in this instance the employees) with means to coerce the defaulting party.

Further asserting statutory rights in themselves, the complainants maintain that the conduct of the Company and its officers was a statutory offense in the nature of conspiracy under the provisions of Section 19 of the Criminal Code which provides that, "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the * * * laws of the United States," they shall be punished, and they further maintain that injunction will lie to restrain means for promoting such conspiracy. Pettibone vs. United States, 148 U. S. 197; Duplex Co. vs. Deering, 254 U. S. 465. Even so, the thing which is done or is threatened must in itself be unlawful, or, if lawful, it must be carried out by unlawful means in order to constitute a conspiracy. The thing here charged against the Company was conduct which, under the terms of the Transportation Act and in the light of the decision of the Supreme Court in Pennsylvania Railroad Company vs. Labor Board, supra, was not unlawful either in purpose or in means employed to carry out the

purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right.

For these several reasons we are constrained to hold with the learned trial Judge (294 Fed. 556 and 296 Fed. 220) that the complainants have not shown rights for the enforcement of which the processes of a court of equity are available.

The decrees of the District Court dismissing the bills are affirmed.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

JUDGMENT—Filed July 14, 1924

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, July 14, 1924.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 14, 1924

The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees now comes by its counsel and in connection with its petition for appeal, files the following assignment of errors, on which it will reply in its appeal to the Supreme Court of the United States from the final order of said United States Circuit Court of Appeals affirming the decree of the District Court for the Eastern District of Pennsylvania in the above entitled cause dismissing the bill therein.

The Circuit Court of Appeals erred:

First. In holding and deciding that the relief prayed for in the bill should have been denied and in affirming the decree of the District Court dismissing the bill.

Second. In holding and deciding that the Act of Congress of February 28, 1920, known as the Transportation Act of 1920, Title III thereof, conferred on the employees of the Pennsylvania Railroad Company no new rights of the kind in issue in this cause.

Third. In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate carriers the right to avail themselves of the machinery and procedure provided by the said Act for the settlement of disputes between employers and employees and for the attainment of just and reasonable wages and working conditions.

Fourth. In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate carriers the right to avail themselves of the procedure and machinery set up by the said Act without molestation, interference, oppression, coercion and intimidation from their employers and confers reciprocal rights to the employers.

Fifth. In not holding and deciding that Title III of the Transportation Act of 1920 confers on employees of interstate carriers the right to be properly represented in conferences, proceedings preliminary to hearing before the United States Railroad Labor Board, and any other procedure under the said Title III, and to have their true will ascertained in this regard without molestation, interference, oppression, coercion or intimidation from their employers.

Sixth. In not holding and deciding that Title III of the Transportation Act of 1920 makes it unlawful for the management of interstate carriers to coerce the employees into abandoning the right to avail themselves of the machinery provided by the said Act for the settlement of disputes, or in any manner whatsoever to thwart the true will of the employees in this regard, or in any manner whatsoever to hinder, obstruct or impede the said employees in their procedure under and pursuant to the said act.

Seventh. In not holding, deciding and adjudging that the appellees had combined and conspired to obstruct, defeat and render unavailing to the employees represented by appellant the method for settling disputes between the said employees and the management of the Pennsylvania Railroad System provided by Title III of the Transportation Act of 1920, the remedy of the said employees for unjust and unreasonable wages and working conditions afforded by said Title III, and the procedure and machinery set up by said Title III to attain said remedy.

Eighth. In not holding, deciding and adjudging that the appellees had combined and conspired by concerted action to injure, oppress, threaten and intimidate said employees in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act of 1920.

Ninth. In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the right established in said employees by said Title III to designate and authorize an organization of employees as their representative to confer with officers of the carrier as provided by Section 301 of the said Title III.

Tenth. In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the right established in the said employees by said Title III to designate and authorize as their representative to confer with the representatives of the carrier, and to refer undecided disputes to the Railroad Labor Board, pursuant to Sections 301 and 307 of said Title III, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or its System Board of Adjustment.

Eleventh. In not holding, deciding and adjudging that the appellees had combined and conspired to impede, obstruct and hinder the said employees in the utilization of Title III of the Transportation Act of 1920 by the following means and methods:

a. By dividing said employees into regions and districts and requiring such employees to designate at an election persons employed in each district as representatives of the employees of such district, the rule of election to provide that the individual receiving the highest vote be considered elected although voted for by only a small minority of those voting in such district, and although the choice of the majority should be an organization of employees; the effect and object of said division being to prevent said employees from arriving at a common position and from proceeding in a collective, co-ordinated, systematic, orderly and unified manner toward the formulation and development of a dispute and toward its settlement pursuant to the procedure, remedy and rights afforded by Title III.

b. By entering into, with individuals elected as representatives of "Regions" as aforesaid, regional regulations purporting to be agreed to on behalf of the body of clerical and station employees; by establishing, by agree— with the said individuals, new regional and other associations of employees, which said associations should have no provisions for dues to be paid by their members, but should be controlled by appellees and supported by funds of the Pennsylvania Railroad Company or System; by constituting the said associations the exclusive representatives of the body of clerical and station employees in conference under Title III or otherwise; the object and effect of all of the foregoing acts being to establish such wages and working conditions as the appellees should see fit, free from utilization by said employees of the remedy and procedure afforded by Title III, and free from the danger of a decision of the Labor Board adverse to appellees' position and from the obliquy of public opinion attendant upon refusal to obey such decision.

Twelfth. In not deciding, holding and adjudging that the appellees had combined and conspired to hinder, impede and defeat the utilization by employees represented by appellant of Title III of the Transportation Act of 1920, by establishing, by agreement with representatives of minorities elected as set forth in the preceding assignment of error, "by-laws" providing for the exclusive procedure for the adjustment of controversies between the said employees and the management; the said "by-laws" further providing for the establishment of joint regional committees to be made up of an equal number of the officers of the Company and the purported representatives of employees, with power finally to decide controversies between the employees and the management; the said "by-laws" further providing that the employees and the management should have equal voting power in such regional committees and that not less than two-thirds should be necessary to reach a decision; the effect and object of said "by-laws", joint regional committees and procedure for settlement of controversies being to limit controversies to individual grievance cases, to prevent the initiation of general wage or working condition movements, to prevent reference of any controversy to the United States Labor Board unless the management should be willing to have it so referred, and otherwise to block access by said employees to the remedy afforded by Title III of the Transportation Act of 1920.

Thirteenth. In not holding, deciding and adjudging that the appellees, in pursuance of the unlawful conspiracy set forth in Assignments of Error numbered "Eleventh" to "Twelfth" have proceeded and are continuing to proceed toward the accomplishment of the several objects of the said conspiracy specified in the said Assignments of Error, and have oppressed, injured, threatened and intimidated and are continuing to oppress, injure, threaten and intimidate the employees represented by appellant, citizens of the United States, in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act, and have obstructed, impeded and hindered, and are continuing to obstruct, impede and hinder the said employees in the utilization of the remedy and procedure afforded to them by said Title III, and have rendered and are continuing to render the said remedy and procedure unavailing to the said employees and have blocked and are continuing to block the access of the said employees to the said remedy and procedure.

Fourteenth. In holding and deciding that the facts on which the bill in this cause rests and the facts of the bill filed in the District Court for the Eastern District of Pennsylvania by Pennsylvania Railroad System and Allied Lines Federation #90 et al. and considered by the said Circuit Court of Appeals simultaneously with the case at bar, (March Term, 1924, No. 3140), differ only in those details which arise from differences in the crafts and their labor organizations.

Fifteenth. In holding and deciding that the action brought in the said District Court by Pennsylvania Railroad System and Allied Lines Federation No. 90, et al. and considered by the said Circuit Court of Appeals simultaneously with the case at bar (March Term, 1924, No. 3140), embraces all questions raised in the action at bar.

Sixteenth. In holding and deciding that Title III of the Transportation Act of 1920 does not make it compulsory upon the carriers to confer with the representatives of the employees.

Seventeenth. In not holding and deciding that Title III of the Transportation Act of 1920 makes it compulsory upon carriers and the employees or subordinate officers thereof to consider all disputes in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officers thereof directly interested in the dispute.

Eighteenth. In holding and deciding that the acts charged in the bill against the appellees were conduct which was not unlawful either in purpose or in means to carry out the purpose.

Nineteenth. In not holding and deciding that the acts charged in the bill against the appellees constituted a statutory offense in the nature of conspiracy under Section 19 of the Criminal Code, and that injunction will lie to restrain means for promoting such conspiracy.

Wherefore, the appellant prays that the said decree of the said Circuit Court of Appeals, affirming the decree of the District Court, may be reversed and that the appellant may have an adjudication and decree in its favor as herein specified.

Henry T. Hunt, Solicitor for Appellant.

Received & filed Aug. 14, 1924. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1924

No. 3118

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Appellant,

against

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. Atterbury, Elisha Lee, George L. Peck, C. S. Krick, M. W. Clement, T. B. Hamilton and I. W. Greer, Appellees

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

PETITION FOR APPEAL

Now comes The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, appellant, by its solicitor, and complains that in the record and proceedings and also in the rendition of the decree of the United States Circuit Court of Appeals for the Third Circuit, sitting at Philade-phia, in the State of Pennsylvania, in the above styled and numbered cause, affirming the decree of the United States District Court for the Eastern District of Pennsylvania in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the District Court of the United States for the Eastern District of Pennsylvania depended upon the fact that the action involved a controversy arising under the laws of the United States, to wit, under the Act of Congress of February 28, 1920, known as the Transportation Act of 1920, Title III thereof; that the amount involved therein and the matter in controversy exceeds the sum of One Thousand Dollars besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal to the end that the cause may be carried to the Supreme Court of the United States and petitioner prays for a supersedeas of said judgment and such other process as is required to perfect the appeal prayed for to the end that the error therein may be corrected.

Henry T. Hunt, Solicitor.

Appeal and supersedeas allowed, and bond fixed in the sum of Two hundred fifty Dollars, conditioned as the law directs, this 14th day of August, A. D. 1924.

(Sgd.) J. Warren Davis, Circuit Judge.

[File endorsement omitted.]

BOND ON APPEAL FOR $250—Approved and filed Aug. 26, 1924; omitted in printing

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IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, William P. Rowland, Deputy Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of The Pennsylvania System Board of Adjustment etc., Appellant, vs. The Pennsylvania Railroad Co. et at., Appellees, No. 3118, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 27th Day of August, in the year of our Lord one thousand nine hundred and twenty-four, and of the Independence of the United States the one hundred and forty-ninth.

Wm. P. Rowland, Deputy Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit).

CITATION—In usual form, showing service on John Hampton Barnes; omitted in printing

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Endorsed on cover: File No. 30,594. U. S. Circuit Court of Appeals, Third Circuit. Term No. 629. The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, appellant, vs. The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, et al. Filed September 2nd, 1924. File No. 30,594.

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CLERK

No. 629

IN THE

Supreme Court of the United States.

~~No. 629~~—OCTOBER TERM, 1924.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,

Appellant,

—against—

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON and I. W. GREER,

Appellees.

Motion to Advance.

The appellant herein respectfully moves the Court to advance this cause.

A brief statement of the matter involved and the reasons for the application follow:

Matter Involved.

This is a proceeding in equity for an injunction.

The bill charges the defendants with obstructing the exercise by clerical employees of the

Pennsylvania System of rights conferred on them and other employees of interstate carriers by Title III of the Transportation Act of 1920.

The action seeks, by enjoining the obstructions maintained by defendants, to preserve the opportunity of clerical employees of the Pennsylvania Railroad System to exercise the rights conferred on them by said Title.

The appellant contends that Title III of the Transportation Act of 1920 confers on management and employees of interstate commerce the following rights, among others:

(1) In general, the right, free of the obstruction set up by defendants described in the bill, to avail themselves of the procedure provided by the Act toward the establishment of just and reasonable wages and working conditions.

(2) The right of any class of employees to create a dispute within the meaning of Title III by ascertaining through collective processes the will of such class as to what constitutes just wages and working conditions.

(3) The right of the body of employees of any class to designate and authorize representatives to represent the class in conference with the management with regard to the dispute.

(4) The right of such body of employees to have the employer designate and authorize representatives to represent it in conference with the representatives of the employees.

(5) The right of the body of employees or of its representatives to refer the dispute to the Rail-

road Labor Board in case it remains a dispute after the conference.

(6) The right of the body of employees to present to the Labor Board through these representatives or others its position on the pending dispute.

(7) The right of the body of employees to the decision of the Board on the submitted dispute and to the publication of the Board's decision and to the effect of such publication on public opinion and to the effect of public opinion on the employing management.

(8) The right of the body of employees through its representatives to apply to the Board for compulsory process for witnesses and papers and the right to make application to the Board for a contempt finding by the Board in case of disobedience to the Board's decision by the other party and the right to the effect of publication of such finding on public opinion.

The bill charges the defendants with a continuing conspiracy to obstruct the exercise of the foregoing rights by the clerical and station employees of the Pennsylvania Railroad System.

The bill charges that the means applied by the defendants to obstruct the exercise of the rights stated comprise the following:

The establishment, maintenance, support and control by the Pennsylvania Railroad management of associations of clerical employees, which associations the management treat as the sole representatives of the clerical employees. These associations are supported entirely by the funds of the Pennsylvania Railroad System. The officers and committeemen of the associations are paid

with the funds of the Pennsylvania Railroad System for their work in behalf of such associations. The Pennsylvania Railroad System pays all expenses of the associations and provides these associations with office space and issues continuous propaganda on their behalf. These associations are in fact the creatures of the management.

By the by-laws of the company associations referred to, regional joint committees are established. These regional joint committees control the action of the associations. Officers of the Pennsylvania Railroad System constitute one-half of the membership of these joint committees. No action can be taken by these committees, except by a two-thirds vote. Thus the officers of the Pennsylvania Railroad System are enabled to control the action of the associations.

The prayer seeks to enjoin the expenditure of Pennsylvania Railroad funds for the purposes stated and to enjoin the defendants from conferring with the committeemen of the company associations as the designated and authorized representatives of the body of clerical employees and also seeks to enjoin the defendants from permitting any officers of the System from acting as members of the Regional Joint Committees.

By reason of these and other acts of the defendants set out in the bill, clerical employees of the Pennsylvania Railroad are unable to utilize the procedure provided by Title III, and the exercise by them of the rights set out above is completely obstructed.

Furthermore, the said acts are unlawfully obstructive of the governmental policy declared by Title III.

Reasons Why This Cause Should Be Advanced.

It is a matter of public knowledge that the Sixty-eighth Congress is deeply concerned with railroad labor legislation. The Howell Barkley Bill to strike out Title III and to substitute a different procedure has been approved by the railroad labor organizations and has strong support in Congress. When Congress meets the subject will doubtless again preoccupy it. The success of the Pennsylvania System and of other railroads in obstructing the exercise by employees of the rights stated is one of the reasons why the railroad organizations wish to secure the repeal of Title III. A decision by this Court defining the rights conferred on railroad employees by Title III will be illuminating to Congress.

The advancement of this case will expedite the settlement of a Federal railroad labor policy.

The clerical employees of the Pennsylvania Railroad number approximately forty thousand. A determination by this Court as to what rights have been conferred by Title III is of great importance to them and to almost two millions of other railroad employees.

Many other railroad managements have followed the Pennsylvania Railroad Company in getting up company unions similar to those described in the bill. It is desirable that the legality of the railroad company unions be determined.

For these reasons it is respectfully urged that this cause be advanced.

HUNT & SWIGER,
Solicitors for Appellant.

FREE COPY

DEC 15 1924
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM 1924, No. 629.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,

Appellant,

against

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON and I. W. GEER,

Appellees.

BRIEF FOR APPELLANT.

HENRY E. HUNT,
Counsel for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, Appellant, *against* THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON and I. W. GEER, Appellees.	October Term 1924 No. 629.

I.

STATEMENT OF THE CASE.

1. The action an appeal.

This is an appeal from a decree of the Circuit Court of Appeals of the Third Circuit, affirming a decree of the District Court for the Eastern District of Pennsylvania dismissing the bill. The case was heard in the District Court upon the bill, answer and exhibits filed in support of the bill.

The action involves a controversy arising under the laws of the United States, to wit, the construction of Title III of the Transportation Act of 1920.

2. The names of the parties.

The appellant is an organization of clerical and station employees of the Pennsylvania Railroad System.

It brings this action as representative of its membership and for the benefit of all clerical and station employees of the said System.

The defendants are the Pennsylvania Railroad Co. and its chief officers. The Pennsylvania Railroad Co. is a corporation organized and existing under the laws of the State of Pennsylvania, having its main office, and doing business in the Eastern District of Pennsylvania. The Pennsylvania Railroad Co. controls through stock ownership, leases, and otherwise, a number of railroad carriers whose properties it operates in the states of Pennsylvania, New York, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Ohio, Kentucky, Indiana and Missouri, as the Pennsylvania Railroad System. The other defendants are the president, vice-president in charge of operation, vice-president in charge of personnel of the Pennsylvania Railroad Co., vice-president of the Eastern Region of the Pennsylvania Railroad Co., the general manager of the Eastern Region, of the Pennsylvania Railroad Company, the general manager of the Central Region of the Pennsylvania Railroad System, the general manager of the Northwestern Region of the System, and the general manager of the Southwestern Region of the System.

3. The nature of the proceedings:

This is a proceeding in equity for an injunction. The bill charges that the opportunity and right of clerical and station employees to utilize the procedure of Title III of the Transportation Act of 1920 has been completely cut off by the defendants. This has been accomplished

by establishing machinery and practices designed to have that effect. This machinery consists of "Associations of Employees" without dues or other means of self support and with such constitutions and by-laws as enable the defendants to control them. These practises consist of the financing of these associations with the funds of the Pennsylvania Railroad System, the exercise of control over them by the defendants, the power exercised by these associations over the designation by employees of their representatives to confer with the management, the exclusive recognition by the defendants of these associations and their committeemen as the representatives of employees, coercion of employees into joining these associations and false representations by defendants as to the nature of these associations and their acts.

It is submitted that the institution of these practises in concert by the defendants in May, 1921, was an unlawful conspiracy to prevent employees from utilizing Title III of the Transportation Act of 1920, that this purpose appears by irresistible inference, that this purpose was illegal, that the practises stated were designed to effectuate and do effectuate the illegal purpose and that all these practises are accordingly illegal, and that they are illegal also because subversive of the rights of the public and of the employees and of the duties of the defendants under Title III, and because subversive of the purposes of Congress in enacting that Title. Accordingly, the prayer asks that these practises be enjoined.

4. Legal Basis of Action.

The appellant's case is based upon Title III of the Transportation Act. (Printed as Appendix A hereto.)

This is a regulation of the employment status of officers and employees of interstate commerce. Its object is to further in the public interest the non-interruption of railroad operation by strikes. To that end it imposes duties on and grants correlative rights to such officers and employees. To aid the accomplishment of its object,

the duty is imposed on both to use their best efforts to adjust differences and specifically to designate representatives to confer and to endeavor to reach an agreement and to refer the controversy to the Labor Board for decision in case of an agreement is not reached in conference (Sec. 301). These duties are imposed primarily in the public interest.

By necessary implication, the duty to confer and to refer involves the duty to select representatives for these purposes and to refrain from interference with selection by the other party and from interference with the functioning of such representatives. The selection of representatives by employees, conference and reference, necessarily involves collective processes. It is the duty of officers (managements) to refrain from interference with these processes. These duties also are imposed primarily in the public interest. The performance of them brings about the action and situation which Congress believed would tend to prevent the interruption of operation by strikes, to wit:

(1) The opportunity to officers and employees to present to each other in formal conference the matters in controversy.
(2) The opportunity to refer controversies undecided in conference to the Labor Board.
(3) The establishment of a period during which the status quo shall be preserved, to wit, the period between the presentation of the dispute to the conference and decision by the Labor Board, to the end that violent feeling might be allayed, impetuous action restrained and the public interest be considered.
(4) The opportunity for the formation of an intelligent public opinion guided and instructed by the public presentation of the controversy to the Labor Board and by the Board's decision.

Title III is thus a regulation declaring the public interest in uninterrupted operation and a regulation of the employment status of officers and employees of inter-

state carriers, attaching to the status duties the performance of which tends to further the object stated. The imposition of these duties on the officers of railroads raises a correlative right in employees to performance. A statement of the rights correlative to the said duties follows:

1. In general, the right of employees and managements to avail themselves of the procedure provided by the Title toward the establishment of just and reasonable wages and working conditions.
2. The right to initiate and conduct action toward ascertainment of the will of the employing corporation or of the class of employees concerned with regard to conditions of employment and with a view to the presentation of this will to the other party as a collective request.
3. The right of the management and of the employees of any class to designate and authorize representatives to represent it in conference and to conduct the presentation of the collective will in conference.
4. The right of each to have the other designate representatives to meet and confer with its representatives and endeavor in good faith so to adjust the controversy.
5. The right of each to refer the dispute to the Railroad Labor Board in case it remains a dispute after the conference.
6. The right of each to present to the Labor Board through representatives its position on the pending dispute.
7. The right of each to the decision of the Board and to the publication of the Board's decision and to the effect of such publication on the other and to the effect of such publication on public opinion.
8. The right of each through its representatives to apply to the Board for compulsory process for witnesses and papers and the right to make application to the Board for a contempt finding and the right to the effect of the publication of such finding on public opinion and on the other.

Congress has declared it necessary in the public interest that there be opportunity to exercise these rights.

5. Summary of bill and prayer. (Record, pp. 4-33.)

The bill charges that the defendants are continuously obstructing the exercise of these rights by the station and clerical employees of the Pennsylvania System. The obstructive practices are:—

The establishment, maintenance, support and control by the management of the Pennsylvania Railroad System of associations of clerical and station employees. These associations are supported entirely by the funds of the Pennsylvania Railroad system. They have no dues or other means of self support. Their officers and committeemen are paid from the funds of the Pennsylvania Railroad System for their work in behalf of such associations. The system pays all expenses of the associations, provides them with offices and issues continuous propaganda on their behalf. By the By-Laws of these associations regional joint committees are established. These regional joint committees, according to the by-laws, control the action of the associations, including its action on disputes with regard to wages or working conditions. Officers of the Pennsylvania Railroad System constitute one-half of the membership of these joint controlling committees. No action can be taken by these committees except by a two-thirds vote. Except by the consent of the officers of the Pennsylvania Railroad System, members of the committee, the associations can refer no dispute to the Labor Board.

The management of the Pennsylvania Railroad System refuses to recognize or to confer with any other association or organization of clerical or of station employees with regard to the wages and working conditions of these employees.

The management has thus made these associations the only avenue to Title III procedure and dominates and controls this sole avenue.

The right and opportunity of employees to select their own representatives and through them to confer with the management is essential to the procedure established by Title III. This right and opportunity is frustrated and denied. The effect and object of the maintenance and control of these associations by the management, together with other machinery, practises and policies sought to be enjoined, is utterly to preclude and prevent the said employees from utilizing the procedure and exercising the rights afforded them by Title III, and to evade the performance of duties imposed by said Title on the management, to substitute for the method commanded by Congress a method utterly destructive thereof and thus by increasing the risk of interruption of operation by strikes to violate the public policy declared by the Title.

Relief prayed for: The bill prays for an injunction restraining the defendants from continuing to finance these associations and from permitting the officers of the Pennsylvania System to serve as members of the regional joint committees of these associations, from controlling or attempting to control the designation of representatives by the clerical and station employees, from participating in the conduct of elections for the designation of representatives by the said employees, from coercing the employees into joining their associations, from conferring with the committeemen of these associations as the representatives of the employees and for other relief specified.

(Prayer, record pages 30-33, Secs. 106-114 inclusive.)

6. Abstract of bill and answer.

In order to show that there is no substantial disagreement as to the facts and to present more clearly the questions involved and the manner in which they are raised, an abstract of the bill and answer follows:

The Bill: After describing the appellant and its parent organization, the Brotherhood of Railway Clerks, the representative character of the appellant, the citizenship of the appellant's membership, naming the defendants and stating the Federal question involved, the bill proceeds (Secs. 23-37, pages 7-11, inc.) to set out the events leading up to the conspiracy charged.

These allegations are admitted by the answer (record, page 36).

The bill (section 39, page 12) charges a conspiracy entered into by defendants on or about May 1, 1921 to obstruct the exercise by the employees of the rights stated and describes the plan adopted and applied by the defendants to effectuate this object.

The seven steps or subdivisions of the plan are then set out (Sections 40-54, pp. 12-16, inc.).

The first step (Sections 41-42) was to deprive the employees of leadership by preventing them from designating an organization as their representative to confer with the management.

The second step (Sections 43-45) was to prevent the employees from designating the appellant, the only functioning organization.

The third step (Section 46) was to divide the employees into regions and districts and require them to designate persons actively employed in the district as district representatives, and also to declare elected the person receiving a plurality of votes, although such plurality might be only an infinitesimal minority.

The fourth step (Sections 48-49) was to enter into purported agreements with the individuals receiving the highest vote cast for individuals and to put these agreements in effect as agreed to by the body of employees affected through their representatives.

The fifth step (Section 50) was to establish associations of clerical and of station employees in the several regions in substitution for the appellant's organization, these to have no dues or other means of self-support, but to be supported entirely by the funds of the Pennsylvania System and to be controlled by the officers of that System.

The sixth step (Section 52) was to constitute these associations exclusive representatives of the employees in relations with the management.

The seventh step (Section 53) was to establish by agreement with purported representatives of employees by-laws governing these associations, which were to provide exclusive procedure for the adjustment of controversies between the employees and the management and to provide for regional joint committees—controlling committees made up of an equal number of officers of the system and of purported representatives of the employees—such regional joint committees to be the final committee with power to decide controversies, and all action to be by two-thirds vote.

The bill alleges that the intent, object and purpose of these several steps was to prevent the employees from utilizing the procedure of Title III.

The answer denies that the defendants entered into any such conspiracy or adopted a plan with any such object, purpose or intent.

The bill then proceeds to set out the acts of the defendants which show that the intent, purpose and object of defendants was to obstruct employees as stated.

These acts are denominated the means applied to effect the object of the conspiracy (bill, secs. 65-92).

The defendant Atterbury's announcement of May 24, 1921, is set out (bill Sec. 57, Exhibit E, Record pp. 70-76 inc.). This states that Decision 119 of the Railroad Labor Board declares that employees have the right to select representatives from among their own number (to confer with the management on rules to govern working conditions), that detailed conditions, "designed solely to secure an accurate expression of the desires of the employees, under which representatives will be chosen, will be announced later, that the men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen."

At the same time, avers the bill, (Sec. 58) the defendants without consent of the employees promulgated the rules to govern the election of representatives which fixed the method of nomination, the form of ballot, the qualifications for voting, provided that a plurality though a minority might elect, divided the system into regions and districts within which employees were to vote severally for representatives of employees employed in the district, and with a view to the establishment of regional agreements and associations. These election rules denied the opportunity to employees to designate an organization of employees as their representative, (Secs. 62-63) permitted the defendants to declare elected persons receiving a minority of the votes cast (Sec. 65), and created a large number of election districts within each of which the employees were to select three employees of that district to act as their representative. (Sec. 66).

The answer admits these averments (Record, p. 57).

The bill then avers (Sec. 61 that the said rules and the holding of the election were unlawful because Title III requires the maintenance of the status quo pending the Labor Board's decision on disputes, and proceedings were then pending before the Labor Board as to the legality of the elections. (Sec. 66.)

By reason of the unlawfulness of the election a great number of the employees of the classes concerned refused to vote. (Sec. 67.) Nevertheless, the defendants, avers the bill (Sec. 68), held the election on May 29, 1921, themselves designated as representatives of employees persons receiving but a small percentage of the vote, far less than a majority, and conferred divisionally and regionally with the so-called representatives and entered into so-called agreements with them establishing working conditions of the classes concerned and established regional associations of employees, more particularly described later.

The answer (page 38) admits these averments (68).

The bill then charges (Sec. 69) that these regional agreements, regulations and associations were created by the defendants to further the object of the defendants' conspiracy.

Two forms of ballot were provided, one for clerical employees and one for station and other employees. (Sec. 70.)

In two of the regions set up by the company for the election of representatives of clerical employees, a majority of those voting voted for the Brotherhood of Railway Clerks. These votes were declared void and thrown out. These regions were the northwestern where 1911 ballots were cast for the Brotherhood out of a total of 1934 votes, and the southwestern region where 1375 votes were cast for the Brotherhood out of a total of 1820. In the central region 1165 votes were cast for the Brotherhood out of 3900 votes. (Sec. 70)

Out of 27,839 clerical employees held eligible to vote at this election by the defendants, 18,692 voted; of these 996 cast blank or defective ballots; out of 17,696 effective ballots cast on the System 4,612 were cast for the Brotherhood of Railway Clerks. More than 9,000 clerical employees declared by the defendants eligible to vote did not vote (Secs. 71-72).

As to station employees; in the southwestern region, out of 665 votes for this class, 560 voted for the Brotherhood of Railway Clerks. In the northwestern region out of 1,071 votes cast, 837 voted for the Brotherhood; in the central region out of 1,267 votes cast, 900 voted for it. All these votes were thrown out. Out of 6,202 votes by this class, 435 were blank or defective; out of 5,767 effective votes cast, 3,102 were cast for the Brotherhood. Thus the Brotherhood had a substantial majority on the System of the employees of this class, as well as a majority in three of the five regions established by the defendants (See p. 73, Exhibit G, p. 82).

The bill then (Sec. 76) sets out characteristic details of the election. On the Akron division, where there were 172 clerks, the defendants declared elected (designated as representatives of employees) committeemen who received respectively 5, 5 and 4 votes. On the eastern division, central region, 750 votes were cast; committeemen were declared elected who received respectively 94, 65 and 61 votes. On the Pittsburgh division, out of 1,345 votes cast, committeemen were declared elected who received respectively 151, 147 and 146 votes. On the Renovo division, out of 305 votes, a committeeman was declared elected who received 19 votes. On the Baltimore division, eastern region, 416 votes were cast for the Brotherhood of Railway Clerks. These votes were thrown out and a committeeman declared elected who received but 28 votes. On the Chicago Terminal division, northwestern region, the Brotherhood received 495 votes, but committeemen were declared elected who received respectively 105-83 and 76 votes.

The answer admits the allegations of the bill with regard to the votes at this election (see answer Record, p. 38).

The bill then proceeds to aver in paragraph 77 that the defendants in pursuance of the object of their conspiracy met with the persons declared by them to have been elected in meetings purporting to be conferences within the meaning of Section 301 of Title III. These meetings were held in Philadelphia on or about July 5, 1921 with regard to the Eastern Region and with regard to other regions at Pittsburgh, Chicago and St. Louis on or about the same date.

Paragraph 79 of the bill recites what was done at these purported conferences. Defendants there persuaded the purported representative to agree to certain "regulations". These "regulations" embodied rules and working conditions for this class of employees. The

defendants and the purported representatives then proceeded to execute the said "regulations" as agreements purported to have been entered into by the general manager of each region and committees purporting to represent the body or class of clerical employees of each region. Similar "regulations" embodying rules covering station and other employees were executed by the general managers and by the committees purporting to represent the body or class of the miscellaneous forces. The management then in pursuance of its conspiracy declared these regulations to be the basis of the employment contracts between the Pennsylvania Railroad System and the clerical and station employees of the several regions and put them into effect as having been agreed to by the body or class of said employees through their representatives. The bill then avers (Sec. 80), that these purported representatives did not in fact represent the clerical or station employees, but were, to all intents and purposes, selected by the management as representatives of the said employees and that in truth and fact, the "regulations" had not been agreed to by the body of employees concerned.

The answer states with regard to these averments (paragraphs 77-82 inc.) that the defendants held meetings and conferences with the representatives of the clerical and station employees and avers that the said representatives were duly and legally chosen and empowered to confer with defendants on such matters.

The bill then recites the establishment of the regional associations (Sec. 81). About August 1, 1921 the defendants met with the persons declared by them to have been designated as representatives of the clerical employees of the eastern region and persuaded these employees to agree to the establishment of an association known as the "Clerks Association of the Operating Department of the Pennsylvania Railroad System, Eastern Region". About the same time defendants met with the

purported representatives of employees in other regions —Pittsburgh, Altoona, Chicago and St. Louis and persuaded them to agree to the establishment of similar organizations for the several other regions.

Section 82 of the bill recites the establishment by the defendants of regional associations for station employees of the eastern district and for the several other regions of the Pennsylvania System.

Section 83 states that the said associations have no dues or other provisions for the financial support of their officers, agents, or representatives designated to utilize Title III or otherwise.

Section 84 states that the defendants paid with funds of the defendant corporation, from time to time, persons purporting to act as representatives of the employees for the time occupied with the business of such purported representation and have since and are now paying such persons in that regard and are paying with funds of the defendant corporation expenses of the said associations.

The defendant's answer admits these allegations (Record, p. 39).

Section 85 of the bill avers that the defendants at various times prior to and since August 1, 1921 has published at the expense of the Pennsylvania Railroad Company bylaws of the "Clerk's Association" and of the "Miscellaneous Forces Association" of the several regions.

Section 86 avers that the bylaws provide that controversies between the management and employees of this class shall be handled by the several committees established thereunder up to the "joint regional committees". These joint regional committees are composed one-half of the officers of the company and one-half of the so-called representatives of employees. It is made the function of the joint regional committees to decide con-

troversies between management and employees of the classes concerned which remain undecided by the subordinate committees. A two-thirds vote of the members of the joint regional committee is necessary to reach a decision. One-half of the members of the joint regional committee are officers of the Pennsylvania System.

The answer (p. 39) admits these averments.

Sections 87, 88 and 89 of the bill aver the inference to be drawn from the bylaws with regard to the joint regional committees. It is averred that by reason of these bylaws the management is enabled to prevent a reference of any dispute to the Labor Board although all employee "representatives" vote for said reference. It is averred that these provisions are unlawful because they are inconsistent with Title III and destructive of its intent and render such bylaws unlawful. It is also averred in Section 89 that bylaws are unlawful because adopted and established as means in pursuance of said unlawful object and conspiracy of defendants. Copies of the bylaws in effect on the eastern region which are substantially identical with the bylaws of other regions, are set out bill marked, Exhibits "I" and "J" (Record, 88-129).

The authenticity of these exhibits is admitted by the defendants (Record, p. 39).

Section 93 of the bill avers that the defendants since April 15, 1921 have refused and still refuse to confer with appellant as representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, and require that all matters of controversy between the management and employees be handled through said regional associations.

It is then averred (Section 94) that the said associations have no provisions for dues or other means of self support and that the said associations are unable to act toward the utilization of Title III, except as the management may permit.

By the establishment of these associations and the managements exclusive dealing with them all action of clerical and station employees, members or non members of said association, toward the utilization of Title III is obstructed and defeated.

The answer denies these averments.

Section 95 of the bill avers that the defendants intend to continue expending large amounts of funds of the Pennsylvania Railroad Company in compensating the said purported representatives for time employed in that regard, in paying the expenses of said associations and in paying expenses of elections to elect "representatives"—all in pursuance of the object of the conspiracy. The averments of this subsection are denied by the answer.

The bill then (Sec. 96) describes Decision 220 of the U. S. Railroad Labor Board, dated August 3, 1921, by which the Board held the election of May 29, 1921 illegal and void and the alleged "agreements" and "regulations" void and of no effect. These averments are admitted by the defendants' answer (page 39).

Section 97 of the bill avers that the continued refusal of the defendants to permit the employees to designate an organization as their representative and their continued frustration of the most practical and convenient method whereby the employees can act toward the utilization of Title III, and their continued refusal to confer with appellant as representative of said employees or as representatives of its membership, who are employees of the System, and the requirement that all subjects of dispute be handled pursuant to the bylaws of the regional associations, have had the effect of influencing large numbers of the employees of these classes into voting at the elections conducted by the defendants and into joining the associations set up by them. These employees, avers the bill, have abandoned hope of the free exercise of the rights afforded them by Title III and are persuaded that

the defendants have succeeded in preventing them from utilizing the procedure afforded by the Title and that the defendants have rendered their right of no avail, and that they may receive some benefits by participation in said elections and through the associations established by the defendants. This is denied by the answer (Rec., p. 39).

Section 98 avers coercion by the subordinate officers of the Pennsylvania Railroad System of the employees into accepting and signing for ballots for elections and into becoming members of the associations by threatening discharge. Affidavits supporting the charges of coercion were submitted to the Railroad Labor Board in Docket No. 405, May, 1923; certified copy of these affidavits is annexed to the bill marked Exhibit "K".

Section 99 of the bill avers that these unlawful acts of the defendants have detached from membership in appellant's organization a number of its former members and will continue, if unrestrained, to detach others. The said unlawful acts are promoting and, if unrestrained, will continue to promote the object of said conspiracy of defendants, officers of the System, by reducing the ability of the clerical and station employees to act toward the utilization of Title III; the said Brotherhood of Railway Clerks being the only organization available to these employees equipped with machinery necessary for the utilization of said title.

The answer (pages 40-41) denies these allegations except that it admits that affidavits were made as set out in said section 98, but denies that the affidavits correctly state the facts.

The bill avers (Section 100) that the defendants threaten to apply at future elections the unlawful rules applied at the 1921 elections and to continue in effect the regulations as having been entered into with persons representing the clerical and station employees and to continue to require that all subjects of dispute shall be

handled through these associations, and to continue to refuse to confer with the appellant as representatives of the employees or of its own membership.

The answer of the defendants (page 40), admits that the defendants propose to continue the application of the election rules, denies that they are unlawful and that the elections held are unlawful, and avers that the defendants had ample power to make such rules in accordance with conferences with its employees, adopted and approved by a large majority of the employees at elections subsequently conducted.

The bill then avers that the members of the appellant's organization have no adequate remedy at law, that multiplicity of suits would result from proceedings at law, that the said acts, which the defendants threaten to continue, are doing irreparable injury to the rights of the members of the appellant's organization and to the rights of the station and other employees established by Title III, and are destroying the remedy afforded them by said Title and are injuring the property rights of the appellant (Section 102).

Section 103 avers that unless the court grant the relief prayed for, there is danger that the defendants will succeed in their conspiracy and that the utilization of Title III will be defeated with regard to the clerical and station employees of the Pennsylvania System and the income of the appellant will be further reduced in large amounts.

The answer (page 40) denies the lack of remedy at law, irreparable injury or injury to the property rights of the appellant.

The prayer (Sections 106-14 of the Bill, pp. 30-33 inc.) seeks to restrain the defendants (1) from paying compensation to any officer or committeemen of the company associations and from paying any of their expenses and from paying for the publication or circulation of their by-laws and from permitting any officer of the system to

serve as a member of the regional committees of any of the associations; (2) also from controlling or attempting to control, through regional joint committees or otherwise, the designation of representatives by the clerical or station employees, and from continuing in effect election regions or districts or rules to govern any election for representatives and from regulating and from conducting or participating in the conduct of elections to determine such representatives, and from printing or distributing ballots and from paying for the printing or distribution of ballots, rules and regulations to govern such elections.

It is also prayed (3) that the court enjoin the defendants from permitting any officer or subordinate officer to coerce the clerical or station employees into accepting or signing for any ballots or voting at any election or into joining any such associations by threat of discharge or any other disadvantage in case of refusal to accept or sign for said ballots or to become members of said associations; (4) that the court enjoin the defendants from conferring or agreeing with the committeemen of these company these associations or any of them as the designated representatives of the body of clerical or station employees.

Paragraph 5 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the designated representative of the members of the appellant's organization, who are employees of the Pennsylvania Railroad, on any dispute in which they are directly interested and from omitting and refusing to decide such dispute in conference if possible.

Paragraph 6 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the designated representative of the clerical forces of the northwestern and of the southwestern regions in any dispute in which they are directly interested.

Paragraph 7 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the representative of the station employees of the central, northwestern and southwestern regions.

The eighth paragraph of the prayer seeks to enjoin the defendants from representing that the "regulations" in effect for the government of clerical forces and other station forces had been agreed to on behalf of such forces and from publishing or circulating "regulations" wherein the words "for the employees" or the words "Committee representing clerical forces" or the "Committee representing office forces" or words of like import, stating that the said "regulations" have been agreed to by the said classes of employees through representatives, and requires the defendant corporation to cancel and expunge or to announce the cancellation of such words on all copies of said "regulations" within its control. The ninth paragraph of the prayer asks for general relief and for a permanent injunction.

The prayer is here set out in order to present more clearly the questions involved. Sufficient has been said to explain pars. 1-3 inc. Comments on pars. 4-8 inc. follow:

> "1. Paying compensation to any officer or committeeman of the Pennsylvania Railroad System Clerks' Associations or of the Miscellaneous Forces' Associations of the Operating Departments of the Eastern, Central, Northwestern and Southwestern Regions, of the System General Office and of the Altoona Works, for time occupied with the business of said Association or for time occupied with the business of representing employees of the Pennsylvania System, and from expending funds of the Pennsylvania Railroad Company or System to pay any expenses of any of said Associations or any expenses of any of their officers or committeemen,

or to pay for publication or circulation of any By-laws of said associations or of any proceedings thereof, and from permitting any officer of the Pennsylvania Railroad Company or System to serve as a member of the Joint Regional Committee of any of said associations.

"2. From controlling or attempting to control or to affect through regional joint committees or otherwise, the authorization or designation of representatives by the clerical or by the station employees (miscellaneous forces) of the Pennsylvania System to confer with the representatives of said System, and from establishing or continuing in effect election regions or districts or rules to govern any election for representatives of clerical or station employees (miscellaneous forces) of the Pennsylvania System and from regulating, conducting or participating in the conduct of elections to determine such representatives whether as members of regional joint committees of clerical or of miscellaneous forces associations or otherwise, and from printing or distributing ballots for such election and from paying with funds of the Pennsylvania Railroad Company or System for the printing or distribution of ballots, rules or regulations to control or govern the conduct of such election, except in such manner and to such extent as the Railroad Labor Board has decided or may hereafter decide to be just and reasonable.

"3. Permitting any officer or subordinate official of the Pennsylvania Railroad Company or System to coerce clerical or station employees (miscellaneous forces) into accepting or signing for any ballots for voting at any election for committeemen of clerical or miscellaneous forces' associations or into joining any such associations by threat of discharge or threat of any other disadvantage to said employees in case of their refusal to accept or sign for said ballots or to become members of said associations.

The record shows that the persons with whom the defendants now confer as representatives of employees are without title and that the practise of conferring with them obstructs the regulation of Congress (Title III); hence the fourth paragraph of the prayer seeks to enjoin the defendants from continuing to confer with these persons in that capacity as follows:

> "4. From conferring with or agreeing with the committeemen of said associations or any of them as the designated and authorized representatives of the body or class of clerical or of station employees (miscellaneous forces) of the System or of any region of the System or of any district of any region."

As the record shows that the appellant has been designated by the appellant's membership, employees of the Pennsylvania Railroad System, to represent them, the regulation of Congress imposes the duty on the defendants to confer with the appellant as the designated representatives of said members. Hence the fifth paragraph of the prayer seeks to enjoin the defendants from refusing to confer with the appellant as representatives of these employees as follows:

> "5. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, on any dispute in which said members are directly interested, and from omitting and refusing to decide such dispute in conference if possible."

The record shows that the clerical forces of at least the central, northwestern and southwestern regions of the Pennsylvania Railroad System have designated the appellant as their representative. Accordingly the sixth

paragraph of the prayer seeks to enjoin the defendants from refusing to confer with appellant as the representatives of these employees as follows:

> "6. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the clerical forces of the Pennsylvania System or of the northwestern or of the southwestern regions on any dispute in which said clerical forces or any of them are directly interested, and from omitting and refusing to decide such disputes in such conference if possible."

The record also shows that the appellant has been designated as their representative by the station employees of the Pennsylvania System.

Hence the seventh paragraph of the prayer seeks to enjoin the defendants from refusing to confer with the appellant as the representative of these employees as follows:

> "7. From refusing and omitting to confer with the System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the station (miscellaneous forces) of the Pennsylvania System or of the central, northwestern or southwestern regions on any dispute in which said station or miscellaneous forces or any of them are directly interested and from omitting and refusing to decide such disputes in conference if possible."

The record shows that the defendants are representing, contrary to fact, that the regulations in effect for the government of clerical and station employees have been agreed to on behalf of such employees.

The eighth paragraph of the bill seeks to enjoin the defendants from so declaring and asks that they be required to cancel or to announce the cancellation of these misrepresentations.

II.

THE QUESTIONS INVOLVED.

The questions involved are:

(1) Does Title III of the Transportation Act regulate the employment status of officers and employees of interstate carriers by attaching to it the duties and correlative rights stated? (ante, pp. 3, 4, 5).
(2) Do the admitted practises of the defendants, (prayer 1, 2, 4, 8) sought to be enjoined unlawfully obstruct this regulation?
(3) If so, should a Federal court of equity at the suit of the complainant enjoin the continuance of these practises?
(4) Do the admitted (everything charged except coercion) acts and practises of defendants show a concerted purpose by defendants to obstruct utilization of Title III?
(5) If so is this purpose unlawful?
(6) If the purpose is unlawful, do practises (1, 2, 4, 8) sought to be enjoined further it?
(7) Should a Federal court enjoin said practises at the suit of appellant?
(8) Has appellant established also its right to the relief sought in sections (3, 5, 6, 7) of the prayer?

Remark. Of the factual basis of the bill (facts alleged as distinguished from inferences) only coercion is denied.

The right of appellant to the relief sought in paragraphs 1, 2, 4 and 8 rests upon the theory that the practises therein described are admitted and are unlawful both because subversive of Title III and because means to accomplish an unlawful object.

Coercion is denied—hence as to (3) there is the further question whether it has been made out.

The right of appellant to the relief sought in (5), (6), (7) depends upon the evidence of the appellant's title to represent the classes specified.

The Assignments of Error.

The questions stated are raised by the assignments of error to the decree of the Circuit Court of Appeals, as follows (Record, pp. 376-380, inc.):

"The Circuit Court of Appeals erred:

FIRST: In holding and deciding that the relief prayed for in the bill should have been denied and in affirming the decree of the District Court dismissing the bill.

SECOND: In holding and deciding that the Act of Congress of February 28, 1920, known as the Transportation Act of 1920, Title III thereof, conferred on the employees of the Pennsylvania Railroad Company no new rights of the kind in issue in this cause.

THIRD: In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate carriers the right to avail themselves of the machinery and procedure provided by the said Act for the settlement of disputes between employers and employees and for the attainment of just and reasonable wages and working conditions.

FOURTH: In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate commerce the right to avail themselves of the procedure and machinery set up by the said Act without molestation, interference, oppression, coercion and intimidation from their employers and confers reciprocal rights to the employers.

FIFTH: In not holding and deciding that Title III of the Transportation Act of 1920 confers on employees of interstate carriers the right to be properly represented in conferences, proceedings preliminary to hearing before the United States Railroad Labor Board, and any other procedure

under the said Title III, and to have their true will ascertained in this regard without molestation, interference, oppression, coercion or intimidation from their employers.

SIXTH: In not holding and deciding that Title III of the Transportation Act of 1920 makes it unlawful for the management of interstate carriers to coerce the employees into abandoning the right to avail themselves of the machinery provided by the said Act for the settlement of disputes, or in any manner whatsoever to thwart the true will of the employees in this regard, or in any manner whatsoever to hinder, obstruct or impede the said employees in their procedure under and pursuant to the said act.

SEVENTH: In not holding, deciding and adjudging that the appellees had combined and conspired to obstruct, defeat and render unavailing to the employees represented by appellant the method for settling disputes between the said employees and the management of the Pennsylvania Railroad System provided by Title III of the Transportation Act of 1920, the remedy of the said employees for unjust and unreasonable wages and working conditions afforded by said Title III, and the procedure and machinery set up by said Title III to attain said remedy.

EIGHTH: In not holding, deciding and adjudging that the appellees had combined and conspired by concerted action to injure, oppress, threaten and intimidate said employees in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act of 1920.

NINTH: In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the rights established in said employees by said Title III to designate and authorize an organization of employees as their representative to confer with officers of the car-

rier as provided by Section 301 of the said Title III.

TENTH: In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the right established in the said employees by said Title III to designate and authorize as their representative to confer with the representatives of the carrier, and to refer undecided disputes to the Railroad Labor Board, pursuant to Sections 301 and 307 of said Title III, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or its System Board of Adjustment.

ELEVENTH: In not holding, deciding and adjudging that the appellees had combined and conspired to impede, obstruct and hinder the said employees in the utilization of Title III of the Transportation Act of 1920 by the following means and methods:

a: By dividing said employees into regions and districts and requiring such employees to designate at an election persons employed in each district as representatives of the employees of such district, the rule of election to provide that the individual receiving the highest vote be considered elected although voted for by only a small minority of those voting in such district, and although the choice of the majority should be an organization of employees; the effect and object of said division being to prevent said employees from arriving at a common position and from proceeding in a collective, co-ordinated, systematic, orderly and unified manner toward the formulation and development of a dispute and toward its settlement pursuant to the procedure, remedy and rights afforded by Title III.

b: By entering into, with individuals elected as representatives of 'Regions' as aforesaid, regional regulations purporting to be agreed to

on behalf of the body of clerical and station employees; by establishing, by agreement with the said individuals, new regional and other associations of employees, which said associations should have no provisions for dues to be paid by their members, but should be controlled by appellees and supported by funds of the Pennsylvania Railroad Company or System; by constituting the said associations the exclusive representatives of the body of clerical and station employees in conference under Title III or otherwise; the object and effect of all of the foregoing acts being to establish such wages and working conditions as the appellees should see fit, free from utilization by said employees of the remedy and procedure afforded by Title III, and free from the danger of a decision of the Labor Board adverse to appellees' position and from the obloquy of public opinion attendant upon refusal to obey such decision.

"TWELFTH: In not deciding, holding and adjudging that the appellees had combined and conspired to hinder, impede and defeat the utilization by employees represented by appellant of Title III of the Transportation Act of 1920, by establishing, by agreement with representatives of minorities elected as set forth in the preceding assignment of error, 'by-laws' providing for the exclusive procedure for the adjustment of controversies between the said employees and the management; the said 'by-laws' further providing for the establishment of joint regional committees to be made up of an equal number of the officers of the Company and the purported representatives of employees, with power finally to decide controversies between the employees and the management; the said 'by-laws' further providing that the employees and the management should have equal voting power in such regional committees and that not less than two-thirds should be necessary to reach a decision; the effect and object of said 'by-laws', joint regional committees and procedure for settlement of controversies being

to limit controversies to individual grievance cases, to prevent the initiation of general wage or working condition movements, to prevent reference of any controversy to the United States Labor Board unless the management should be willing to have it so referred, and otherwise to block access by said employees to the remedy afforded by Title III of the Transportation Act of 1920.

THIRTEENTH: In not holding, deciding and adjudging that the appellees, in pursuance of the unlawful conspiracy set forth in Assignments of Error numbered 'SEVENTH' to 'TWELFTH' have proceeded and are continuing to proceed toward the accomplishment of the several objects of the said conspiracy specified in the said Assignment of Errors, and have oppressed, injured, threatened and intimidated and are continuing to oppress, injure, threaten and intimidate the employees represented by appellant, citizens of the United States, in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act, and have obstructed, impeded and hindered, and are continuing to obstruct, impede and hinder the said employees in the utilization of the remedy and procedure afforded to them by said Title III, and have rendered and are continuing to render the said remedy and procedure unavailing to the said employees and have blocked and are continuing to block the access of the said employees to the said remedy and procedure. * * *

"EIGHTEENTH: In holding and deciding that the acts charged in the bill against the appellees were conduct which was not unlawful either in purpose or in means to carry out the purpose."

The foregoing assignments of errors are in effect included in the first assignment, that the Circuit Court of Appeals erred in affirming the decree of the District Court dismissing the bill. The argument will be based, therefore, on that assignment.

III.

THE COURTS BELOW ERRED IN DISMISSING THE BILL. ARGUMENT.

A. Statement of the Situation and Analysis of the Evidence.

The following recital of the events leading up to the institution of the practises sought to be enjoined and to the conduct of defendants submitted to be unlawful is deemed necessary to show the purposes of the defendant and the legal effect of their acts and of these practises.

It is based upon public documents and is submitted as a part of the history of the times.

Prior to Federal control (January 1, 1918) it was the policy of the Pennsylvania Railroad System to enter into no agreements with any organization of its employees, except the train and engine service brotherhoods and the employees of this System, with the exception stated, were then in general unorganized.

During Federal control it was the policy of the Railroad Administration to encourage organization of employees and to enter into collective agreements with them. Among others, great numbers of employees of the Pennsylvania Railroad System became members of the so-called Standard Employees organizations. From time to time, the Director General entered into formal contracts called "National Agreements" with these organizations as representatives of the several classes of employees, members and non-members of their organizations. These "National Agreements" classified the positions in the service, defined the work of each class and prescribed the duties, rights and wage rates of the incumbents. These "National Agreements" were applied to the positions in the service of the Pennsylvania Railroad System as well as to other railroads under Federal control. Among them was that entered into in January

1920 between the Director General of railroads and the Brotherhood of Railway Clerks. This covered wage rates and working conditions of the clerical and station employees, freight handlers, and the like, of the several railroad systems in the United States, including the Pennsylvania Railroad System.

While the Brotherhood of Railroad Clerks was and is a national organization having membership throughout the United States, it was and is organized also according to railroad systems. For example, the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania Railroad System, are members also of the System Board of Adjustment of the Brotherhood of Railway Clerks, the local organization having its own constitution and by-laws and self determination in matters concerning the relation of its members with the Pennsylvania Railroad System. With these relations the national organization may not concern itself unless invited to do so by the local association. (Excerpts from the local and national constitutions and by-laws showing this autonomy exhibited in the Record, pp. 42-69. Board of Adjustment Membership, p. 65. Protective Committees, pp. 54, 55, 56, 57.)

When possession of the Pennsylvania Railroad System was returned to its owners and management on March 1, 1920, the management found employer-employee relations largely fixed and determined by the national agreements. They also found the system organizations such as the System Board of Adjustment of the Brotherhood of Clerks acting as representatives of the employees of the several classes.

This situation was not in accord with the labor policy of the management prior to Federal control and immediately the management set themselves to restore the situation, so far as might be, to pre Federal-control conditions.

Section 312 of the Transportation Act prohibited any change in wage rates or working conditions during the guarantee period from March 1, 1920 to September 1, 1920. Furthermore, the entire matter of wage rates and working rules for Pennsylvania System employees, among others, had been referred on April 15, 1920 to the Railroad Labor Board for its decision. Effective July 20, 1920 the Labor Board had decided the wage portion of the dispute, but had continued the National Agreements in effect as a *modus vivendi* until it could hear evidence with regard to the reasonableness of the rules embodied in them. On January 31, 1921 the defendant Atterbury, as Chairman of the Labor Committee of the Association of Railroad Executives, presented to the Labor Board a formal demand on behalf of that association that the Board remand the rules dispute to the several railroads for negotiation and agreement between the several railroad managements and its employees. On April 15, 1920 (Decision 119) the Board decided to terminate on July 1, 1921 the *modus vivendi* declared by Decision 2, subject to certain conditions. In order to provide new or modified rules in substitution for the rules embodied in the National Agreements, the Board by its Decision 119 called upon the officers and upon the system organizations of employees of the several railroad systems to meet and confer and to endeavor to agree upon what these rules should be. Up to this time the Pennsylvania Management had continued to apply the rules of the National Agreements to positions in the service of the Pennsylvania Railroad System.

The words of Decision 119 "System organizations of employees, parties to the dispute" pointed to the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks (appellant herein) as the organization entitled to confer with the representatives of this carrier with regard to rules for its clerical

and station employees. The decision directed the Pennsylvania Railroad System officers to confer with, and, if possible, to make collective agreements through this organization as the representative of employees concerned. If agreement could not be arrived at as to any subject matter, the parties were again to refer such subject matter to the Board for decision.

Decision 119 confronted the Pennsylvania Management with the necessity of either making collective agreements with the appellant organization and with the Federated Shop Crafts System Federation No. 90, as representatives of the clerks, station employees and shopmen, or of disobeying the decision and exposing the management to outlawry by the Labor Board and to the charge of bad faith in view of the demand of January 1921. The management endeavored to avoid these results by contending that the Board had no jurisdiction to decide who should represent employees and that Decision 119, insofar as it required them to negotiate with the System Board of Adjustment, was invalid (See Pennsylvania Railroad *v.* Railroad Labor Board, 261 U. S., p. 72).

Accordingly, the management in 1921 brought injunction proceedings against the Board to restrain it from publishing a finding that the Pennsylvania Railroad System was in disobedience of its decision (No. 218). This injunction proceeding was decided by this court in February, 1923. This court ordered the injunction dissolved and the bill dismissed. During its progress the employees of the Pennsylvania System were in doubt as to the meaning and effect of Title III. The Supreme Court decided that the Labor Board was within its powers in passing upon the title of representatives but made it clear that there was no penal sanction to enforce decisions of the Board.

The Institution of the Practices Sought to be Enjoined.

At the same time (May 1921) that the defendants determined to contend that the Board had no jurisdiction to decide the title of representatives, they determined also to establish a plan whereby clerical, station and shop employees would be prevented from selecting their own representatives, and from utilizing Title III procedure. The method adopted and applied was to restrict the right of the employees of these classes to name their own representatives and specifically to restrict them from naming an organization of employees. It also set up election districts and regions within each of which the employees were required to select three representatives, who were required to be employees in active service in that district.

This plan of the defendants is submitted to be an illegal conspiracy for the reason that its purpose and effect was the obstruction of Title III (a regulation of the employment status of officers and employees of interstate carriers) and the obstruction of employees' utilization of Title III procedure and of the exercise of Title III rights, such purpose being unlawful.

The means instituted to accomplish this illegal object (the practises sought to be enjoined) are also illegal.

The conspiracy of the defendants is described in Sections 39-44 of the bill. The object stated was to be furthered and is being furthered by the practises sought to be enjoined.

Nature of Proof.

The proof of this conspiracy consists of the averments of the bill, the admissions of the answer and the exhibits submitted in support of the bill.

The averments of fact of the bill are admitted; only the inferences drawn from these facts are denied.

The bill charges as overt acts and as means in fur-

therance of the objects of the conspiracy the following acts and practises of the defendant:

The publication of the plan with misrepresentations as to its purposes and effect on May 24, 1921 (Ex. "E", Record, p. 70).

The formulation by defendants of rules for the election of representatives by the employees with the stated restrictions on choice.

The holding of the election under the rules stated and the investiture by defendants of persons as "representatives" of employees who were not entitled to that character.

The execution of regulations governing working rules by agreement with these purported representatives and publication of these "regulations" as having been agreed to by representatives of the employees concerned (Clerks' regulations, Record, Ex. "I", p. 88; Station employee regulations, Record, Ex. "J", p. 129).

The establishment and maintenance of regional associations of employees, supported by funds of the Pennsylvania Railroad System, with by-laws as stated (Ex. "L", Record, p. 232).

Conferring with the committeemen of these associations as representatives of clerical and station employees.

Refusal of defendants to confer with the appellant as representative of its own members, employees of the system or as representative of clerical employees of the System, or of clerical employees of the northwestern or of southwestern regions or of station employees of the System or of the central, northwestern and southwestern regions.

Continued participation of officers of defendants in the regional joint committees of the associations, the committees controlling the election rules and the conduct of the associations.

Coercion by officers of the Pennsylvania Railroad System of employees into becoming members of these associations (denied by answer, but supported by affidavits set out in the Record, pp. 108-44).

The answer admits all these acts and practises, except the last.

The development also of the conspiracy is shown by the bill, by the admissions of the answer and by the documents filed as exhibits.

DISCUSSION OF DOCUMENTS IN EVIDENCE SHOWING DEVELOPMENT OF CONSPIRACY.

The Announcement of May, 1921.

The announcement of May 24, 1921 (Record, pages 70-76) is the first overt act. In this announcement, the defendant Atterbury purports to outline the "plan". After stating parts of decision 119 of the Railroad Labor Board, he says (page 74):

> "The railroads are asked to confer with representatives of different classes of employees with a view to establishing proper rules and regulations. This is precisely what the management of the Pennsylvania Railroad has desired. The employees have the right to select the representatives from among their own number. Detailed conditions, designed solely to secure an accurate expression of the desire of the employees under which representatives will be chosen will be announced later. The men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen. * * * This plan, of course, will not be put into effect for men in engine or train service. All controversial questions affecting these men are now settled by the Joint Reviewing Committee and it is earnestly desired to establish a similar method for settling controversial questions affecting employees in all other branches of the service."

The Joint Reviewing Committee, referred to by the defendant Atterbury, was set up by the agreement entered into in December 1920, by the Pennsylvania man-

agement with the four Brotherhoods of train and engine service employees. This agreement is set out in the record, pages 245-253. The Joint Reviewing Committee is described and its powers stated in sections 18-20-25. The agreement governs the method of handling questions between the Pennsylvania System management and its employees in engine and train service. Divisional, regional and systemal handling of controversies is provided for. It is signed for the employees by the General Chairmen of the organizations of employees concerned and for the railroad by the General Managers of each region. This document is submitted as one of the surrounding circumstances and as an example of a bona fide collective agreement entered into by the defendant managers with organizations of its employees. If this agreement is compared with the regulation for clerical and station employees and the associations of clerical and station employees and the method of handling their disputes later set up by the defendants, the difference between the bona fide and the pseudo agreements and organizations will appear in strong light.

The defendant Atterbury states it was "earnestly desired" by the management to establish a "similar method" for settling controversial questions affecting employees in all other branches of the service, but, it is submitted, this was mere gesture. The employees certainly had the same desire, yet there emc[illegible]ed not a similar method but a method as dissimilar as bread and a stone.

The Rules of Election.

After the announcement of May 24, 1921 rules in fulfillment of the promise of rules "designed solely to secure an accurate expression of the desires of employees" were promulgated. (These rules are described in the Bill, section 66). These averments are admitted

by the answer. How "solely designed, etc." will appear from a consideration of their effect.

By these rules the general office forces at Philadelphia and Pittsburgh were segregated from the rest of the clerical employees and divided into six departments, each of which was to elect a committee of three representatives (actively employed in the department). The remainder of the employees were segregated into divisions comprised into four operating regions, the eastern, central, northwestern and southwestern and the Altoona Works. Employees of each division were to designate three representatives actively employed to speak and act for employees of the division. The chairmen of the division committees were to become members of a general committee to speak for employees of the region. There was no provision for systemal representation.

Illegality of Election Rules.

It is submitted that these rules were illegal restrictions on freedom of choice by employees, were obviously not designed to secure an accurate expression of the desires of employees but really to frustrate these desires, that the announcement was in bad faith and intended to conceal its object which was to prevent utilization of Title III by employees.

If railroad officials may legally limit the designation of representatives by employees to the extent of preventing them from designating an organization, they may limit the choice so as to prevent any effective representation. They may require that the representatives be blind, deaf or dumb or not more than 12 years of age. The precluding of organizations destroys the only convenient and practical and the accustomed method for representation of employees. Such representation had always been conducted by a committee of an employee organization the names of the members of which were usually

unknown to the employees concerned. The committee had acquired experience in negotiation, and had in its possession valuable data bearing on the question of the reasonableness of wage rates and usages. When employees are deprived of the services of such committees and compelled to depend upon personal representatives not equipped in the technique of representation, the interests of the employees must suffer. The denial of organization representation is obstructive of a valuable right which affects, financially, wages and usages of employees. If personal representatives must be chosen, unsupported by an organization and otherwise unequipped, the carrier, which is free to choose what counsel it pleases to represent it, and able to supply its counsel with adequate financial support and data has an overmastering advantage. The result is that the employees' position will not be adequately represented in conference, reference to the Labor Board may be defeated or if made the employees' position will not be presented adequately, with the result that unjust and unreasonable wage rates or rules will remain in effect.

To deprive the employees concerned of the right to choose an organization was to deprive them of leadership and indeed of all opportunity to function effectively.

Obstruction by an employing carrier of freedom of choice of representatives by employees impairs the very basis of Title III.

The establishment of voting districts, segregating and subdividing the employees was also unlawful. It has the effect of preventing effective action.

The districting by the defendants of the employees for the purpose of voting was also illegal. Its obvious purpose was to cut the body of employees into small fragments so as to hinder collective action of the whole body.

It is submitted further that the employing carrier is without legal right to determine the method whereby em-

ployees may select representatives. The statute contemplates and requires free selection by employes in whatever manner they see fit.

Description of elections and proceedings resulting from it.

The defendants proceeded on May 29, 1921 to hold the election planned. It was held during proceedings before the Labor Board in which its legality was challenged (See Labor Board Decision 220). This alteration of the *status quo* was itself illegal and in violation of the duty imposed by Title III to maintain the *status quo* until the Labor Board should decide the dispute.

Nevertheless, the defendants held this election (illegal for all these reasons) in the manner and with the results stated in the bill and admitted by the answer. (Exhibit G, Record, pp. 77-87, shows the vote by classes in the several regions. The vote by clerks and station employees appears on page 82.) The bill shows the details of the election in a number of characteristic districts. The defendants declared designated as employees' repsentatives the three individuals who received the highest number of votes in the district, although they may have received as few votes as 5 out of 172 or 94 out of 150 or 151 out of 1,345 or 19 out of 305 or 28 out of 416, as was the case in the districts specified by the bill. Furthermore, the record show with regard to the regional vote on the clerks ballot, that in the northwestern region 1,911 out of 1,934 voted for the appellant as representative and in the southwestern region 1,374 out of 1,820. The regional vote on the station employees' ballot was, in the northwestern region 837 votes out of 1,071 for appellant and in the southwestern region 566 votes out of 665, and in the central region 900 out of 1,257. Despite this expressed desire on the part of these majorities that the appellant should act as their representatives, the defendants declared designated as representatives the three

individuals who received pluralities in each district of no matter how few votes. These three district "representatives" then elected chairmen. These chairmen were constituted into so-called "General Committees" and with these "General Committees" the defendants entered into so-called "Agreements" or "Regulations" which they published as made with the employees (see bill, sec. 79). Copy of "Regulations", effective 1921, was offered in evidence as Exhibit BB, but in order to reduce the record was not printed. Exhibits I and J, effective 1923, are practically identical with the 1921 "Regulations". The committee signing for employees signs as "General Committee Representing Clerical Forces under Jurisdiction of the General and Division Superintendents Eastern Region, Pennsylvania System."

Sham "Associations of Employees" established.

The next step of the defendants to obstruct the Congressional regulation (Title III) was the establishment by defendants in connivance with these pseudo representatives, of clerks' and station employees' associations. Characteristic Bylaws are shown in Exhibit L (Record, pp. 232-243), Bylaws of the Pennsylvania System Clerks' Association, Operating Department, Eastern Region, effective August 1, 1921. These "Bylaws are agreed to on behalf of the defendants by the defendant Krick and "For the Employees" by twenty-one persons described as "General Committee Representing Clerical Forces under the Jurisdiction of General and Division Superintendents, Eastern Region, Pennsylvania System." This document is entitled "Memorandum of understanding covering method to be followed in the handling of questions between the Pennsylvania System Management, Eastern Region and its employees in the clerical forces." This title is doubtless based upon the title of the agreement between the management and the employees in engine and train service (Record, p. 245). The court will

notice (See Record, p. 234) that in addition to governing the method to be followed in the handling of questions, etc. the document also purports to be the constitution and bylaws of an employees' organization.

These bylaws show on their face that the association is a sham. It is without dues or means of self support. No provision is made for meetings of the membership. All these associations (one for each region for the clerks and one for the station employees) are controlled by the Regional Joint Committee thereof which is controlled by the officers of the Pennsylvania Railroad System. This committee fixes the rules governing the nomination and election of representatives (Article 4, Section 3). The election rules put in effect in 1921 cannot be changed except with the consent of the management. No amendments to the constitution and bylaws of this association can be made except with the consent of the management (Article 6, Sections 1-3). Article IX (p. 246) governs procedure for adjustment. It requires joint submission. If employee and management representatives cannot agree, no step can be taken. Unless the management—members on the Regional Joint Committees—consent, no dispute can be referred to the Railroad Labor Board.

Similar associations governed by similar constitutions and bylaws were established about the same time and in the same manner, covering the other regions of the Pennsylvania Railroad System.

The 1923 constitutions and bylaws of these associations, now in effect, are practically identical with those of 1921. (As to Clerks', see Ex. "I", p. 113, power over amendments by Regional Joint Committee, Art. 13, Sec. 1; control of election rules, Art. 4, Sec. 3. As to Station employees, Ex. "J", p. 149; power of Regional Joint Committee over amendments, Article 12, Sec. 1; election rules, Art. 4, Sec. 3; see also, as to clerical employees, Ex. MM, Central Region, Clerical Employees' Associa-

tion.) The draftsman of this last document has not taken the trouble to define the composition of the Regional Joint Committee, except as to the employee members. By implication the company members are to be officers of the company. In this association the General Committee may amend the bylaws by a two-thirds vote (Art. 9, page 317). The Regional Joint Committee, however, controls nominations and elections (See Art. 4, Sec. 3) (See also, Ex. "RR").

It is submitted that these associations are hollow and transparent shams; marionettes pulled and jerked as the management draws the strings. The pretense that they express or can act to accomplish employees' desires is utterly hypocritical. They are instrumentalities established and maintained by defendants to accomplish their unlawful purposes.

Application of August 31st, 1921.

On August 31, 1921 the Pennsylvania Railroad Company made application to the Labor Board (Record, p. 303) to vacate its Decision No. 218 (holding the election of May 29, 1921, null and void). This application is submitted as a surrounding circumstance which tends to illuminate the acts of the defendants and to show their true character. It is submitted also to show misrepresentation by the defendants as to their "plan" and thus as indicia of the illegality of the conspiracy. This application was circulated in thousands of copies. Attention is invited to the statement on page 307:

> "Paragraph 5. * * * It was determined that all classes of employees should have a voice in the administration of matters affecting their welfare through representatives of their own selection, and that such representatives, whether union or non-union men, should be actual employees. In pursuance of this policy conferences were held with representatives duly authorized and designated by the employees in the several crafts.

> There are in the service of the carrier approximateiy 176,000 employees who are interested in and affected by rules covering working conditions and 117,176 or 66 5/10% of said employees have by vote or otherwise, as a result of said conferences, expressed a desire to negotiate rules and working conditions through employee representatives. Accordingly contracts respecting rules and working conditions have been entered into between the carrier and representatives of 149,918 employees, apportioned among the several classes, as follows: * * *
>
> "Clerks and other office, station, storehouse, warehouse and elevator forces, including engine and train crew callers.....39,958."

The record shows that nothing like 39,598 clerks and station employees expressed a desire to negotiate as stated. Altogether 18,692 clerks voted at the election and 6,202 station employees; the voting employees of these two classes aggregate only 24,894. It is only the votes for individuals which can, with any logic whatever, be considered, an expression of desire to negotiate through the representatives designated by defendants. Only 12,502 voted for individuals. How these ballots would have been cast if employees had been free to vote for an organization can only be surmised, but certainly only those ballots cast for individuals should under any theory be considered an expression of approval for defendants' plan. As to the station employees, 13,156 were held by the defendants eligible to vote; 6,202 voted; 2,545 voted for individuals; 3,102 voted for the appellant. Hence not more than 12,502 plus 2,545 or about 15,000 could be held to have approved the defendants "Plan."

The "contracts", referred to by the defendant Rea as having been entered into by the representatives of approximately 39,000 employees, were entered into (stretching the facts as far as possible to support Mr. Rea's statement) by the representatives of about 15,000. Even this assumes that all the persons who voted for individuals

would have voted for individuals just the same if they had been free to vote for an organization—an assumption of extreme violence.

The "contracts" are the "regulations" put in effect by the defendants. They were entered into by the "representatives of employees" who emerged from the illegal machinery set up by defendants and who were without title to that character.

Statement of September 25, 1921.

Further to show the surrounding circumstances and misrepresentation, the defendants' statement of September 25, 1921, is submitted (Record, p. 269). In this statement, which was broadcasted by thousands of copies, the defendant Rea reiterates the disingenuous statements made in the application referred to above (Record, p. 271).

"Speaking for 80,000."

The pamphlet entitled "Speaking for 80,000" of August 22, 1921, is also submitted to show surrounding circumstances and misrepresentations by defendant Atterbury and as one of the means applied by the defendants to promote the object of the conspiracy. The so-called representatives elected in May 1921 were ordered by defendants to attend this meeting; also the committees of System Federation No. 90 and the committees of the appellant's organization. The System Federation No. 90 Committee did not appear. The defendant Atterbury said (Record, page 278):

> "There are represented in this room, then, the representatives of about 80,000 of our employees who have been elected by the company ballot. * * * Now with those 80,000 men we have made agreements * * *. We have made an agreement with 35,000 of our clerical and station employees on the railroad. Are we going back on those 35,000 men? No, we are not."

(Page 281)

> "* * * The trainmen have organized Joint Boards of Adjustment or the Joint Reviewing Committee. These Joint Reviewing Committees are now in process of formation for * * * clerical forces * * *. On these reviewing boards are representatives of the railroad and representatives of the employees."

It is submitted that these statements misrepresented the facts and were made and circulated in order to further the object of the conspiracy by deceiving the employees and the public as to its true nature.

The statements that contracts had been made with 35,000 of the clerical employees and that Joint Reviewing Committees for the clerks were the same as those for the trainmen were untrue.

Election Instructions of May, 1922.

Further, to show the development of the conspiracy the election instructions of May, 1922 are submitted (Record, pp. 282). Attention is invited to page 283:

> "Shall the employee's receipt be taken for the ballot and how? A. Yes, in writing. On election rolls as per sample page B."

The "election roll" referred to is headed as follows:

> "We, the undersigned, members of this association, have received the sealed envelope", etc.

By signing this election roll the persons signing it acknowledge themselves to be members of the association. Although by the by-laws of the association all clerical employees were entitled to vote, whether members or nonmembers, yet under these instructions only members of the associations were entitled to receive ballots. Subordinate officials made it their business to see that all clerical

and station employees became members of the association by threatening discharge if they did not sign this acknowledgment of membership. This coercion is shown by the affidavits set out in Exhibit "K", Record, pp. 208-210, 220-221-230. The signatures of these election rolls are aggregated and are claimed by the defendants to show that the persons signing the election roll approve their so-called plan of representation.

The effect of the instructions is that an employee must become a member of the association to vote. Unless he votes he is denied any form of representation recognized by the management. If he votes he becomes a member of the association and thus is held to approve the plan. Yet these associations are mere creatures of the management, supported, maintained and controlled by it.

Document of March 24, 1922.

Further, to show that the defendants provide these associations with offices and issue propaganda on their behalf, a document is submitted (Ex. "AA", Record, p. 284), dated March 24, 1922, signed by C. B. Althouse, Regional Chairman Miscellaneous Forces. This document is issued from Room 137, Pennsylvania Station, New York. The association, of course, has no funds to pay rent and is furnished this office at the expense of the Pennsylvania Railroad System.

Cleave letter.

The appellant has also submitted a letter dated Harrisburg, Pa., dated May 8, 1922, addressed to Joseph Brown, Train Master, Harrisburg, and signed by E. J. Cleave, Superintendent (Exhibit "DD", Record, p. 288). It shows the Pennsylvania Railroad management supplying the ballots, envelopes, instructions for the election, and directing that ballots must be receipted for on election rolls and that a record must be kept of employees refusing to receive ballots. This direction to record re-

fusals, no doubt, was to secure a record of recalcitrants for purposes of coercion.

The circular of April, 1922 is submitted to show due diligence on appellant's part (Record, p. 286).

L. B. Decision No. 1833.

The Labor Board's decision No. 1833 June 23, 1923, is submitted to show surrounding circumstances and as a part of the history of the times. (See Record, page 330). In this decision the Labor Board published its finding that the Pennsylvania Railroad System was in contempt of its former decision (218).

L. B. Docket 405.

The appellant also submits Exhibit "K" Docket 405 of the Railroad Labor Board, showing the proceedings which resulted in Decision 1833. This is submitted to show misrepresentation by the defendants concerning the "plan" and as constituting means to further the accomplishment of the object of this conspiracy to prevent the utilization of Title III by employees. At page 165 the defendant Rea states that this court by the decision in Pennsylvania Railroad *v.* Railroad Labor Board in effect approved of the "Plan". He then states (Record, page 166):

> "The cardinal points of this plan of employee representations are that:
>
> (a) The employees' representatives must be individuals.
> (b) They must be bona fide employees of the company.
> (c) They must be selected by secret ballot.
> (d) They cannot be labor organizations as such."

As to "(a)" the court's attention is invited to the "Memorandum covering method of handling questions between management and employees in engine and train

service" (Record, p. 245). It is signed for the employees by the General Chairmen of the several organizations concerned as such (p. 253).

As to election by secret ballot: These General Chairmen were not elected by secret ballot but were designated by their organizations.

Leo. I. Kennedy.

As to the general good faith of the defendants "Plan", the court's attention is invited to their dealings with one Leo. I. Kennedy, first as General chairman of the United Brotherhood Maintenance of Way Workers in August, 1921, see Exhibit O, p. 254. This exhibit is an agreement, signed (Aug. 15, 1921) "For the Employees, Leo I. Kennedy, General Chairman, U. B. of M. W. E. & R. S. L.," (United Brotherhood of Maintenance Way Employees and Railroad Shop Laborers) (page 261). Kennedy was elected on June 2, 1921 as representative of these employees voting for him under that designation. Later, sometime prior to Jan. 1, 1922 (See Exhibit "SS", Labor Board decision 1827 Record, page 323) the defendants without terminating this agreement under its termination clause, made another agreement concerning the same subject with Kennedy as General Chairman of the "Pennsylvania System Fraternity". This was done although Kennedy was selected as representative of the U. B. of M. W. E. & R. S. L. by secret ballot and was so recognized by the defendants and without any evidence that the employees wished to act through the "System Fraternity" and not through the first named organization.

It is submitted that these decisions of the Labor Board are a finding of the facts set out by a tribunal empowered to find the facts and are prima facie evidence of the facts found and that they show misrepresentation and legal fraud on the part of the defendants with regard to this so-called "Plan of Representation".

Development of Conspiracy in 1923.

Further misrepresentations were made in the circular of defendant Rea, dated June 28, 1923 (Exhibit U.U., Record, 338).

Bulletin dated April 9, 1923, Miscellaneous Forces Association, Exhibit "JJ", Record 298, is submitted to show propaganda for these sham employee associations issued at the expense of the Pennsylvania Railroad System.

To show the development of the conspiracy and the method whereby the employees are brought to "ratify" the plan, election instructions are submitted, dated May, 1923, Record page 296, Exhibit "II". (Signing the election roll has the effect of a declaration of membership in the association.)

Also election instructions, Miscellaneous Forces, May, 1923, to the same effect (Exhibit "RR", Record, p. 320-1). Further, to show misrepresentation, appellant submits:

Exhibit "OO", (Record, p. 319), letter of May 18, 1923 from defendant Rea to Secretary of Railroad Labor Board. Mr. Rea says:

> "The clerical and miscellaneous forces of the Pennsylvania Railroad System whom the Brotherhood of Railway and Steamship Clerks claim the right to represent, adopted the plan of employee representation and elected by secret ballot the employes they desired to represent them."

B. Proof Shows That Practises Sought to be Enjoined Do Obstruct the Regulation of Congress.

The bill, answer and exhibits constitute the proof of the conspiracy charged and of the acts and practices instituted and maintained by the defendants and alleged to be unlawful and sought to be enjoined.

The proof shows that the defendant management on April 15, 1921 was called upon by the Labor Board to

meet with the appellant as representative of the clerical and station employees and to endeavor to agree with it upon working rules in substitution of the rules of the National Agreements.

The policy of the management was opposed to agreements with organizations of employees, except with regard to the train and engine service organization.

Accordingly, the management instituted its own machinery for the designation of representatives by employees, so designing it that there would emerge "representatives" without experience or support and pliant to the defendants' wishes. In order, also, that the employees might be further obstructed from utilization of Title III, the managements' plan provided for the establishment of purported employee organizations to be controlled by the management and the recognition of these puppet employee organizations as the sole representatives of the employees. The object of the plan was to enable the management to evade performance of its obligations under Title III and to evade conferring with representatives of employees and so to evade possibly adverse Labor Board decisions and adverse public opinion engendered by such decisions. The object, in brief, was to obstruct and hinder collective processes of employees whether for Title III purposes or otherwise. The practises sought to be enjoined are among the means applied to effectuate these objects.

The Labor Board found these agreements void (Rec. 218) and attempted to find the defendants in contempt but were restrained by injunction proceedings instituted by the defendants. While this action was before the courts defendants consolidated their position. Company associations of employees were established by defendants by agreement with the purported representatives. These company associations have no resources except such as are supplied by the Pennsylvania Railroad Sys-

tem. Their committeemen are paid by the Railroad System for association work. Offices are supplied and all expenses paid by the said System. These associations have no dues or other means of self support. Yet they are exclusively recognized and dealt with by the defendants as the only instrumentality through which employees may express themselves to the management. Defendants will confer with no other organization with regard to desires of employees of these classes. By the by-laws of these associations, joint committees are established which control their functioning. Officers of the Pennsylvania Railroad System make up one-half of the membership of these joint committees. No action can be taken except by a two-thirds vote. Thus the officers of the Pennsylvania Railroad System are enabled to control the action of the associations and are enabled to prevent reference of an undecided dispute to the Labor Board. The object of the defendants has been accomplished. Access by employees to the remedy and procedure provided by Title III is completely obstructed. The regulation by Congress has been set at naught and defied.

The defendants repudiate their obligation to perform the duties imposed by it, refuse to perform them, and violate the correlative rights. They assert their own right to maintain a method to settle disputes subversive of the method imposed by Congress. Specifically, the defendants continuously interfere with the designation of representatives by employees, invest as representatives persons without title, confer and make agreements with these pseudo representatives, place in effect these agreements as binding upon the employees and maintain sham associations of employees, instrumentalities of obstruction, control and support them, establishing also such by-laws for them as enable defendants to prevent references to the Labor Board.

C. A Federal Court of Equity at the Suit of the Appellant May Enjoin the Practises Complained of—

Because these practises are means to further an unlawful purpose.

It is submitted that the evidence (bill, answer and exhibits) shows the defendants did, as charged, enter into a plan, combination or conspiracy having the illegal object stated, the obstruction of the Congressional regulation of the employer-employee status (Title III) by preventing utilization by employees of its procedure. The evidence also shows that machinery, policies and practices were instituted and are now being continued in effect by defendants as means to accomplish this object. As the object was and is illegal, being subversive of this regulation and of rights granted to employees and of duties imposed on defendants by Title III, the practices furthering the illegal objects are also illegal. The practices set out in the prayer further the illegal object and are enjoinable. These practices are (prayer, pages 30-33):

1. The financing of the company unions at the expense of the Pennsylvania Railroad System and the service of officers of the system on the controlling committees of these company unions.
2. The control exercised by the defendants over designation by employees of representatives (establishing election districts and rules) printing and distributing ballots and financing these elections.
3. Permitting the coercion of employees into voting at these elections and into becoming members of the company unions.
4. Conferring with the committees of these company unions as representatives of employees.
5. Refusing to confer with the appellant systematically as representative of its members, station and clerical employees of the system.

6. Refusing to confer with the appellant regionally as representative of the clerical employees of the Northwestern and Southwestern regions.
7. Refusing to confer with appellant as representative of the station employees of the Central, Northwestern and Southwestern regions.
8. Representing that the "regulations" in effect were agreed to by the employees concerned.

Because these practises are subversive of a regulation of interstate commerce by Congress.

It is submitted, also that these practises are subversive of Title III considered as a regulation of the employment status of officers and employees of interstate carriers. This Congressional regulation clearly contemplates and is based on free collective action for a lawful object by employees and by the employing carrier, the creation of a dispute through such action, the free designation by each party of representatives to confer with the other, to refer the dispute, if undecided in conference, to the Labor Board, to present the dispute to the Labor Board, to ask for compulsory process, if necessary, and to ask for a contempt finding if necessary.

The by-laws of the "associations of employees" (Record, pp. 113-127, 142-162, 311-317) are regulations of the same subject matter regulated by Title III and inconsistent and subversive of it. Specifically, the powers given the regional joint committees over the designation of representatives of employees, over the reference of disputed to the Labor Board, over amendments and, indeed, over the entire functioning of the association by means of financial control and otherwise, are clearly and palpably subversive of the Congressional regulation. It is conceded that employees and management may legally, by agreement through representatives, establish methods of handling disputes. These methods, however, may not be destructive of the Congressional method, but may be

supplementary thereto. This limitation exists for the reason that Title III establishes the right of the public as well as of employees to the performance of duties imposed on the employer and to the preservation of opportunity to utilize Title III methods. Even duly designated representatives of employees may not contract away this right.

Assuming that the so called representatives, who agreed to the establishment of these associations and their by-laws, were duly authorized, these associations and by-laws are illegal insofar as they are subversive of Title III regulations. They are, in fact, entirely subversive. Nevertheless, the only relief asked in this connection is the removal from them of financial support by the management and the removal of participation by the management in the controlling committees, together with the removal of interference by the management in the designation of representatives by employees.

Title III a paramount regulation of master and servant relation in the service of interstate carriers.

Title III of the Transportation Act of 1920 is a regulation of the employment status of officers and employees of interstate carriers. It attaches to that status in the interest of the public certain duties and correlative rights. Practices of an interstate carrier in violation and obstruction of these duties and rights may be enjoined by a court of equity at the suit of interested employees.

The duty to confer, etc., is mandatory.

The enactment is in the exercise of the power of Congress to regulate interstate commerce. To the end that such commerce be not interrupted by labor disputes Congress has attached to the employment status duties and

rights, the performance and exercise of which tend to further the end stated. Section 301 makes it the duty of all officers and employees to exert every reasonable effort and adopt every available means to avoid interruption to operation growing out of any dispute between the carrier and its employees. More specifically, this section makes it the duty of officers and employees to designate representatives to confer on such disputes and to decide them in conference if possible. If the dispute is not decided in conference, it is made the duty of the parties to refer it to the Railroad Labor Board for decision. The words used are imperative; legal duties are imposed. Since the case of *Martin* vs. *Hunter*, 1 Wheaton 304, 328, the use of the word "shall" in a Federal statute connotes a mandatory duty. Here, too, the word "duty" is also employed.

The construction urged does not unlawfully restrict liberty of contract or otherwise transcend the powers of Congress.

Congress has regulated the relation of master and servant in interstate commerce in a long series of statutes which govern this relation in many aspects and this court in its decisions on these statutes has removed doubts of the constitutional powers of Congress to impose the duties claimed to be specified in Title III.

The First Employers Liability Cases held unconstitutional the Act of July 11, 1906, which abolished the fellow servant rule and otherwise altered the master and servant relation in interstate commerce, for the reason that it regulated intrastate as well as interstate commerce (207 U. S. 463). This court held, however, that the regulation did not unwarrantably restrict liberty of contract (pp. 491-494-495).

In the Second Employers Liability Cases (223 U. S. 1) this court held constitutional the Second Employers

Liability Act of April 22, 1908 which regulated the relation of master and servant engaged in interstate commerce by altering the law with regard to fellow servants, assumption of risk, contributory negligence and right of action for death. It was again expressly held that the act did not unduly restrict liberty of contract. This court said (p. 48):

> "Congress can undoubtedly do anything, which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption. * * * If the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous these bad conditions may and often will prevent the act of commerce or make it less expeditious, less reliable, less economical and less secure. Therefore, Congress may legislate about the agent and instrument of interstate commerce and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such regislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

In Title III of the Transportation Act of 1920, Congress intended to secure the opportunity to employees to present their views as to wages or working conditions to their employers through representatives of their choice, thus enabling them to act toward the removal of wrong and disadvantageous conditions. It was believed that such an opportunity, together with the right of reference to the Labor Board, would reduce the interruption of operation by strikes.

Title III by implication prohibits devices in evasion of its requirements.

The decision quoted from (223 U. S. 1) further states that Congress has power to insure the efficacy of its regulation by prohibiting any contract, rule, regulation or device in evasion of it (p. 52). While Title III does not expressly prohibit obstructive practises it does so by irresistible implication. The imposition of mandatory duties is tantamount to the prohibition of practises inconsistent with those duties.

P. B. & W. Ry. *v.* Schubert, 224 U. S. 603, holds that Congress has power to insure the efficacy of the Employers Liability Act by prohibiting contracts, rules, regulations and devices in evasion of it. This decision struck down a stipulation of the railroad company that acceptance of benefits under contracts of membership in relief departments was equivalent to release from liability.

In C. B. & Q. *v.* U. S. (220 U. S. 559) and in Baltimore etc. *v.* Interstate Commission (221 U. S. 612)—civil actions for penalties—this court upheld the Hours of Service Act (16 hour law—March 4, 1907) which regulates master and servant relations in interstate commerce by making it unlawful for carriers to permit train employees to remain on duty longer than sixteen or despatchers thirteen hours.

Title III by necessary implication secures to interested employees the right to enjoin devices in evasion of its requirements.

In Sou. Ry. *v.* U. S., 222 U. S. 20, the Safety Appliance Act (March 2, 1903) was sustained, following Johnson *v.* Sou. Pac. Ry., 195 U. S. 1. This act regulated the master and servant relation by imposing the duty on the employer of equipping cars with automatic couplers, thereby creating a liability for the breach of that duty.

In Texas and Pacific Ry. *v.* Rigsby, 242 U. S. 33, this court held that the employee of a carrier subject to the

provisions of the Safety Appliance Act injured through a violation of its provisions had a right of action thereunder although such right was not given by express language. The court said (p. 39):

> "A disregard of the command of the statute is a wrongful act and where it results in damage to one of the class for whose benefit the statute was enacted, the right to recover damages from the party in default is implied, * * *. This is but an application of the maxim—*ubi jus ibi remedium.*"

The appellant submits that the practises of the defendants sought to be enjoined disregard the command of Title III (Sec. 301) and have resulted and will continue to result in irreparable injury to the appellant and to its principals. The right to enjoin such practises is implied.

Congress in the Adamson Act (Sept. 3, 1916) further regulated the relation by making eight hours the measure and standard of a day's work for employees engaged in train operation. This regulation was sustained by Wilson *v.* New, 243 U. S. 332, where this court held that the right of the parties (the employer and employees) to agree as to a standard of wages free from legislative interference did not affect the lawmaking power to protect the public right and create a standard of wages resulting from a dispute as to wages and a failure, therefore, to establish by consent a standard (p. 353).

In Adair *v.* U. S., 208 U. S. 161 this court held unconstitutional Section 10 of the Act of June 1, 1893, (30 Stat. 424). This section made it a criminal offense for an officer of a carrier engaged in interstate commerce to discharge an employee solely because of his membership in a labor union. It was held that the relation between membership of an employee in a labor union and interstate commerce was not real and substantial and, therefore, that the regulation could not be sustained, and

that furthermore the statute was an unwarranted restriction on the liberty of the contract of employment. There were strong dissents from this decision. However, its doctrine does not cover the case at bar. Title III imposes no criminal liability and the present case does not bear on the power of a carrier to discharge an employee for membership in a labor union.

When Congress has entered a field of regulation within its paramount authority inconsistent regulations within the same field, whether those of state statutes, of state courts or of carriers, must yield.

Texas and Pac. Ry. *v.* Rigsby (*supra*),
Spokane *v.* Campbell, 241 U. S. 497,
Atchison, etc. *v.* Harold, 241 U. S. 371,
Wilson *v.* New, 243 U. S. 332.

The history of the times shows that Congress intended to secure the opportunity to employees to confer with their employers through representatives and to preserve the status quo pending decisions of the arbitral body.

President Wilson in delivering his annual message to Congress in December, 1916, said:

> "I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men *until a public investigation shall have been instituted which shall make the whole question at*

issue plain for the judgment of the opinion of the Nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the Nation, at any rate before the Nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interest of society itself."

To accomplish the object stated by the President, Title III imposes the duty of preserving the status quo until the Labor Board can hear and decide.

The development of legislation in this field tends to show that Congress intended in Title III to preserve the status quo pending decision and to protect the collective processes necessary for the utilization of the act.

Previous Legislation: The first act in the field of arbitration was that approved October 1, 1888 (25 Stat. 501), following the Knights of Labor railroad strike of 1885. This act is entitled "An act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate commerce." This act provided "that whenever differences or controversies arise between railroad and other transportation companies engaged in the transportation of property or passengers * * * and the employees of said railroad companies, which differences or controversies may hinder,

impede, obstruct, interrupt or affect such transportation", if, upon the written proposition of *either party* to the controversy to submit the differences to arbitration, the other *party* shall accept the proposition, then each of the *parties* shall select and appoint one person, and the two thus selected and appointed shall select the third, and the three shall constitute the board. The board was authorized to conduct hearings at which the parties had the right to be represented by counsel, and "after concluding its investigation said board shall publicly announce its

This act was not utilized in the great Pullman strike of 1894 (see In re Debs, 158 U. S. 564). It is referred to here for the purpose of showing the court that this first act provided for submission of the dispute by the *parties to the controversy.* There can be no parties to the controversy without organization. Organizations, of course, can only act through their representatives.

As a result of the Pullman strike, Congress enacted the Erdman Act (June 1, 1898, 30 Stat. L. 428). This act provides that whenever a controversy concerning wages, hours of labor or conditions of employment shall arise between a carrier and its employees seriously interrupting or threatening to interrupt the business of said carrier, the Chairman of the Interstate Commerce Commission and the Commissioner of Labor, shall, at the request of *either party to the controversy,* put themselves in communication with the parties and shall endeavor to settle the same by mediation and conciliation. If this effort shall be unsuccessful, these officers shall at once endeavor to bring about an arbitration of the controversy, the arbitration to be by a board of three, one to be named by the carrier, another by the labor organization, and the two shall select a third. *Pending the arbitration the status existing immediately prior to the dispute shall not be changed.* Employees dissatisfied with the award shall not quit the service before the expiration of three months

without giving thirty days' notice. The employer dissatisfied shall not dismiss any employee before the expiration of three months without giving thirty days' notice. The right was given to secure specific performance of the award in a court of equity.

The Newlands Act of July 15, 1913 (38 Stat. 63) entitled "An Act to provide for mediation, conciliation and arbitration in controversies between certain employees and their employees", provides more details as to procedure. Procedure in the courts with respect to the enforcement of the award are substantially those of the Erdman Act.

In 1920, it being necessary to legislate with regard to the termination of Federal control and an urgent request having been made by some two millions of railroad employees through their organizations for increases of wages, aggregating $800,000,000, Congress had before it legislation to provide machinery for the settlement of that and future disputes. The two Houses having disagreed with regard to the bill, each appointed managers to confer. On February 21, 1920 the managers on the part of the House made a statement with regard to the conference report. This report was adopted and it became Title III (Congressional Record, Vol. 59, Part 4, Sec. 3260, Title III, 3262). A portion of this statement follows:

> "The House Bill made it the duty of carriers and employees to take all possible means to adjust their differences in the first instance before referring the dispute to any adjustment board. The Senate amendment had no provision upon this subject. The conference bill contains a declaration similar to that in the House Bill *directing the officers of the carrier and their employees to appoint representatives to confer on all matters of dispute.*" (This statement is printed in the Appendix to this brief).

The Newlands Act, which only authorized and encouraged conference, was in effect. In view of the extreme urgency of the situation it was considered necessary by Congress *to require* conferences and *to require* the appointment of representatives and *to require* the maintenance of the status quo (following the Erdman Act and the quoted recommendation of President Wilson) until the Labor Board could be appointed and could hear and decide. Hence the mandatory character of Section 301.

Title III protects the processes necessary for the appointment of representatives.

By irrestible implication section 301 makes it the duty of all officers and employees of interstate carriers to refrain from obstructing the performance of the duties which it imposes, e. g., to refrain from obstructing the designation of representatives by the other party and to refrain from obstructing the processes whereby classes of employees may formulate, present and refer disputes. In view of the Adair case Congress probably could not penalize the discharge of an employee for union activities. It could, however, provide that so long as employees remain in the service and as an incident of that service they should be invested with the legal right to formulate disputes, designate representatives, confer with the employer and refer the dispute to the Labor Board if necessary. So long as employees were in the service they should have the legal right to function with regard to Title III; to designate as representatives organizations capable of utilizing its procedure, equipped with processes whereby the collective will of the class could be ascertained, presented and conducted through conference and before the Labor Board. Organizations able to finance such procedure are essential. Without money the necessary data cannot be collected or the case presented. Furthermore, the word "party" in a statute providing

for the settlement of wage disputes of large bodies of railroad employees connotes organizations of employees and organizations not controlled by the other party, the management. "Party" is used throughout the statute. The word "dispute" also must connote "party" and hence organizations of employees.

Sec. 15a also in effect prohibits the practises sought to be enjoined.

Other sections of the Transportation Act are inconsistent with the use of funds of interstate commerce carriers and the time of their managements to control and maintain employee organizations. Section 15-a requires the Interstate Commerce Commission to adopt such rates that railroads under honest, economical and efficient management will be enabled to earn a fair return on the value of property used in the service of transportation.

It is submitted that subsidizing sham employee organizations and the use of railroad funds for false propaganda to deceive employees and the American people is not honest, economical or efficient. The use of railroad money to support machinery which has the effect of preventing reference to the Labor Board is assuredly inconsistent with Section 15-a. Such use of railroad funds is an injury to the public because it reduces the sums available for the service of transportation and makes necessary pro tanto an increase of rates in order to provide earnings sufficient not only to cover operating expenses and a fair return, but also the expense of pseudo organizations and false propaganda. The use of railroad funds for said purposes is also an injury to the Government of the United States as such use increases operating expenses and thereby reduces what the United States may recapture.

The "plan" of the defendants insofar as it is obstructive of the Congressional Regulation (Title III) is an unlawful conspiracy.

Its purpose was and is to prevent utilization of Title III by employees and to evade the performance of duties imposed on the management by Title III.

Pettibone *v.* U. S., 148 U. S. 97,
Duplex *v.* Dearing, 64 U. S. 465.

These cases define an unlawful conspiracy to be a combination of two or more persons by concerted action to accomplish an unlawful purpose or a purpose not in itself unlawful by unlawful means.

Concert of action appears from the record and is admitted by defendants.

As the purpose of the defendants was and is unlawful, the means applied by them to effectuate it are also unlawful and may be enjoined.

In re Debs, 158 U. S. 564,
Swift & Co. *vs.* U. S., 196 U. S. 378,
Duplex *v.* Dearing, 254 U. S. 465,
Union Pac. R. R. *v.* Ruef, 120 U. S. 102,
U. S. *v.* Railway Emp. Dept., 286 Fed. 228.

The practises complained of are also unlawful because in violation of Section 19 of the Criminal Code.

Section 19 provides:

> "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States or because of his so having exercised the same, they shall be fined not more than $5,000 and imprisoned not more than ten years * * *."

It is submitted that the obstruction of the rights conferred on the appellant's principal by Title III fall within the prohibitions of Section 19.

See Smith *v.* U. S., 157 Fed. 721 (criminal prosecution for peonage under Sec. 19). The court said (p. 725):

> "A right which has been conferred by law is manifestly secured by that law."

The right of employees to utilize Title III was conferred and is secured by that Title.

In U. S. *v.* Moore, 129 Fed. 630, the court held that the right of employees to organize unions is not protected by Section 19, as the protection of this right is left to the States by the Constitution. This, however, was prior to the passage of the Transportation Act and organizations to utilize regulations of interstate commerce is not within the doctrine of that case.

It is submitted that with regard to employees in the service of interstate commerce Congress has the power to protect the right to organize into unions at least to the extent necessary for the utilization of Title III.

Ex Parte Yarborough, 110 U. S. 651, holds Section 19 protects the right to vote for electors and members of Congress.

U. S. *v.* Cruikshank, 92 U. S. 542, holds that section 19 protects the right to petition Congress for a redress of grievances.

Logan *v.* U. S. (144 U. S. 263) construes Section 19 to protect the right of every officer of the United States or persons kept in its custody in the administration of justice to be protected from violence.

U. S. *v.* Lancaster, 44 Fed. 885, holds the right to resort to courts of the United States thereby protected.

In re Quarles, 158 U. S. 532, holds the right protected to communicate to any officer information of an offense against the laws.

The employees of the Pennsylvania Railroad System are prevented by the practises of the defendants from communicating to the Labor Board formal information (a dispute) as to wages and working conditions.

U. S. *v.* Waddell, 112 U. S. 76, holds that section 19 protects the right to enter a homestead upon the public domain and live upon it for the purpose of protecting the entry.

Hedges *v.* U. S., 203 U. S. 1, holds that Section 19 does not protect the right to make contracts because that right is secured not by Federal but by State laws.

U. S. *v.* Morris, 125 Fed. 322, holds the right of negro citizens to lease and cultivate land to be within the protection of the Statute.

Baldwin *v.* Frank, 120 U. S. 678, holds that citizens and not aliens are protected by Section 19.

U. S. *v.* Gradwell, 243 U. S. 476, holds that the right to be nominated as a Senator of the United States is secured by the laws of the States and not by those of the United States—hence the right to be voted for at a primary is not secured by Section 19.

U. S. *v.* Moseley, 238 U. S. 233, holds the right of citizens to vote for members of Congress to be within the protection of Section 19. The opinion contains a history of the Section. Enacted to protect colored citizens against the Ku Klux Klan, the Supreme Court, nevertheless, held it applicable to other conspiracies, saying:

> "We cannot allow the past to so effect the present as to deprive citizens of the United States of the general protection, which on its face it most reasonably affords." (p. 388).

It is submitted that Section 19 may well be applied to protect rights assailed by highly placed raiders who mask themselves under sham employee associations and other paraphernalia.

U. S. *v.* Stone, 188 Fed. 836 at 840, holds that "unlawfully" to deprive a citizen of the United States of his right to vote at a Congressional election is to injure him in the ordinary use of the word "injure". The opinion quotes the Waddell case as follows:

> "The Supreme Court has said of this Statute that it covers any conspiracy to prevent the exercise of any of the rights protected by it or to throw obstruction in the way of exercising such right, or for the purpose or with the intent to prevent its exercise."

See also U. S. *v.* Wheeler, 254 U. S. 281, where it is held that the Constitution does not protect the right of citizens of the United States to free residence, ingress and regress in the States against conspiracies by individuals but only against discriminations by States.

Practises of defendants illegal by force of Section 37.

It is also submitted that the acts sought to be enjoined are illegal by force of Section 37 of the Criminal Code penalizing conspiracy to defraud the United States in any manner or for any purpose.

Hammerschmidt *v.* U. S., 265 U. S. 182, was certiorari to review a judgment of the Circuit Court of Appeals for the Sixth Circuit affirming a conviction on a prosecution for conspiracy to defraud the United States by dissuading persons, by handbills, etc., from registering for military service. This court stated (p. 188):

> "To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated

by misrepresentation, chicane or the overreaching of those charged with carrying out the governmental intention."

The Hammerschmidt case was distinguished from Haas *v.* Henkel, 216 U. S. 467. In the Haas case the court held that a conspiracy to defraud the United States included a conspiracy to obstruct or impair the efficiency or destroy the value of the operations of the Statistical Bureau of the Department of Agriculture. It is there held that acts calculated to impair the value of the reports of that bureau as fair, impartial and reasonably accurate defrauded the United States by depriving it of its lawful right and duty to promulgate official information, acquired and required by law or departmental regulation.

Among the cases holding the same doctrine are:

Hyde *v.* Shine, 199 U. S. 62,
U. S. *v.* Morse, 162 Fed. 429, (certiorari denied 216 U. S. 605),
U. S. *v.* Bradford, 148 Fed. 413 (aff'd U. S. *v.* Stone, 135 Fed. 392),
Curley *v.* U. S., 130 Fed. 322 (certiorari denied 195 U. S. 628).

It is submitted that the acts of the defendants show a conspiracy to evade the duty to designate representatives, etc., and to prevent the employees from constituting themselves a party, from designating representatives to confer, from referring the dispute to the Labor Board. The effect of these acts and of the practises sought to be enjoined is to frustrate the performance by the Board of its duty to publish to the public, to President and to the Interstate Commerce Commission the facts with regard to the disputes which would be referred to it if the duties imposed were performed.

It is submitted that deceit, craft and trickery by the defendants are amply shown. The deceitful promulga-

tion of the "plan", the fraudulent 1921 and later elections, the investiture of persons without title as representatives of employees, the creation of sham employee organizations, misrepresentations as to their character, the establishment of bylaws enabling the defendants to control these organizations, and the long series of misstatements and misrepresentations with regard to the "Plan", together with its obstructive effect on the functions required to be performed by the Labor Board show that the practises complained of are within the prohibitions of Section 37 as construed by the decisions cited. Attention is called in this connection to Section 308 of Title III which provides:

> "The Labor Board * * * (3) shall investigate and study relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights and duties of carriers and employees, and shall gather, compile, classify, digest and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this Title and that the members of the Adjustment Boards and the public may be properly informed."

It is submitted that the practises of the defendants sought to be enjoined tend to prevent the Labor Board from accomplishing its duties under this section.

Equity has jurisdiction by reason of the threat of irretrievable injury.

The practises sought to be enjoined are irretrievably injuring the property rights of the appellant and of its members. The exercise of the rights obstructed and performance of the duties refused by the defendants are valuable to the appellant and to its principals. The opportunity to confer with the employer through representatives, to refer the dispute to the Labor Board and to

secure the pressure of public opinion available through Labor Board procedure is a valuable right. Through its exercise wage rates may be increased in proper case and working conditions made less disadvantageous. The practises sought to be enjoined have had the effect and will continue to have the effect, unless restrained, of reducing appellant's income. (See Bill, Secs. 99, 102, 103, Exhibit B, p. 68.)

Courts of equity will enjoin unlawful interference with property rights.

U. S. *v.* Railway Employees Depart., 286 Fed. 479,
Hitchman Coal Co. *v.* Mitchell, 245 U. S. 229,
American Foundry Co. *v.* Tri-State Council, 257 U. S. 184,
Aiken *v.* Wisconsin, 195 U. S. 194,
U. S. *v.* Railway Employees Dept., 288 Fed. 588.

The flow of disputes is analogous to the flow of commerce.

Federal courts have frequently enjoined the removal of obstructions to the flow of commerce.

In Toledo *v.* Penn. Company, et al. 57 Fed. 730, the court granted an injunction restraining P. M. Arthur, Chief Executive of the Brotherhood of Locomotive Engineers from continuing in force Rule 12 of that Brotherhood. This rule required members of the Brotherhood to refuse to handle cars of a railroad on which a strike had been declared. Section 3, Paragraph 2, of the Interstate Commerce Act requires carriers to exchange traffic. The by-laws of the company associations in this case are analogous to Rule 12. These by-laws enable the defendants to prevent the reference of a dispute to the Labor Board which section 301 requires.

C. B. & Q. Ry. *vs.* Burlington Ry., 34 Fed. 481;
Toledo, et al. Railway *v.* Penn. R. R., 57 Fed. 730;

Coe *v.* Railroad, 3 Fed. 775;
Farmers Loan & T. Co. *v.* M. P. R. R., 60 Fed. 803;
Southern Calif. R. R. *v.* Rutherford, 62 Fed. 796;
U. S. *v.* Railway Employees Depart., 286 Fed. 228;
U. S. *v.* Railway Employees Depart., 288 Fed. 588;
G. N. Railway *v.* Brousseau, 286 Fed. 414;
Great Northern R. R. *v.* Local Lodge, 283 Fed. 557;
Gasaway *v.* Borderland, 278 Fed. 56.

The formulation, conference on and reference of disputes to the Labor Board is a necessary element in the plan of Congress to prevent interruption to operation. Their flow unobstructed by such practises as those sought to be enjoined is essential to the purposes of this Act.

The obstructions maintained by the defendants are analogous to a continuous nuisance which equity may restrain as a constantly occurring grievance.

The acts complained of are a public nuisance.

The appellants and its principals have sufficient special interest to entitle them to relief.

In re Debs, 158 U. S. 582, 586, 592;
State of Penn. *v.* Wheeling Bridge Co., 13 Howard 518.

In the Wheeling bridge case the State of Pennsylvania sought an injunction against the Wheeling bridge on the ground that it was a public nuisance and also constituted a private injury to the State. It was held (page 563) that "a proceeding on the ground of a private and irreparable injury may be sustained against it (the main-

tenance of the obstruction) by an individual or corporation. The injury makes the obstruction a private nuisance to the injured party and the doctrine of nuisance applies to the case where the jurisdiction is made out the same as in a public prosecution. If the obstruction is unlawful and the injury irreparable by a suit at common law the injured party may claim the extraordinary protection of a court of chancery."

In Georgetown *v.* Alexandria Company, 12 Peters 98, this court said:

> "A court of equity also pursuing the analogy of the law that a party may maintain an action for special damages even in case of a public nuisance will now take jurisdiction at the instance of a private person where he is in imminent danger of suffering an injury for which under the circumstances of the case the law would not afford an adequate remedy."

Justice Story says (2 Story's Equity, 203):

> "A court of equity will not only interfere upon the application of the Attorney General, but also upon the application of private parties directly affected by the nuisance."
>
> "In regard to private nuisances the interference of courts of equity by injunction is undoubtedly founded upon the ground of restraining irreparable mischief or of preventing interminable litigation or of preventing multiplicity of suits." (p. 204)
>
> "There must be such an injury as from its nature is not susceptible of being adequately compensated by damages at law, or such as from its continuance or permanent mischief must occasion a constantly recurring grievance which cannot otherwise be prevented than by an injunction." (p. 207)

The right of private individuals suffering special damage by reason of obstructions to highways to an injunction is well established.

See

U. S. *v.* Rindge, 208 Fed. 611,
Machall *v.* Ratchford, 82 Fed. 41.

IV. SUMMARY AND CONCLUSION

The injunction sought should issue.

The practises of the defendants, if not restrained, will destroy the purposes of Title III.

If interstate commerce carriers may continue to maintain and control sham employee organizations, to constitute their officers exclusive representatives of employees, to maintain in effect agreements fixing wage rates and conditions of employment for many thousands of employees made with these pseudo representatives as the contractual act of the employees, and to prevent reference of disputes to the Labor Board, then obviously the utility of Title III is at an end with regard to the employees of such carriers.

This situation exists today on the Pennsylvania Railroad System; the management, by the practises sought to be enjoined, for almost four years has deprived at least 33,000 shopmen, 27,000 clerks, 13,000 station employees and 35,000 maintenance of way men of the benefits of the Act.

The Pennsylvania management, assuming to know better than Congress how to avoid strikes, maintains in effect a plan subversive of the method prescribed by law. It asserts the right to take the risk of strikes despite the public interest in uninterrupted operation.

Their "Plan" has been the cause of at least one very serious strike whereby the public interest has suffered grave injury. On July 1, 1922, 30,000 Pennsylvania shopmen struck for the rights secured to them by this Act. On October 3, 1921 these shopmen voted "yes" on the following question: "In the event that the Pennsylvania Railroad System refuses to comply with decision No. 218 of

the Railroad Labor Board, shall a strike be authorized on a date to be later set?"

The illegal practises of the defendants were also a heavy contributing cause of the nation-wide shopmen's strike of 1922 which seriously interrupted transportation for many months, cost the public at least five hundred million dollars, dislocated industry, and caused suffering to millions of people.

The practises of the defendant have been imitated by a number of railroad managements. The utility of the act and the prestige and value of the Railroad Labor Board have been thus so seriously damaged that a large part of the body of railroad employees are demanding the repeal of the Title and the abolition of the Board. Thus the fate of the Governmental policy set out in Title III depends in great part upon the decision in this case. The success of this policy requires uninterrupted opportunity to employees to avail themselves of the provisions of the Act. When this opportunity is continuously frustrated the Act must fail.

Practically the only legislative methods other than that of Title III for the prevention of strikes growing out of railroad labor disputes are permissive or compulsory arbitration. Aside from political and social considerations, adverse to compulsory arbitration, there is doubt of the power of Congress to impose it except in an emergency (see Wilson *v.* New). Permissive arbitration has not prevented disastrous strikes. The great Pullman Strike of 1894 (see In re Debs) occurred despite the Arbitration Act of 1888, which was enacted as a result of the Knights of Railroad Labor Strike in 1885. In 1916 it was necessary for Congress to intervene directly and compulsorily to arbitrate the dispute then unsettled between the Railroad managements and the train service employees—and this although the Newlands Act providing for arbitration was in effect and available (see Wilson *v.* New).

The Newlands Act was also in effect in 1920 when another dispute between two million railroad employees and the Director General of Railroads was alarming the country.

As a substitute for compulsory arbitration and as a step in advance of entirely permissive arbitration, Congress enacted Title III which requires the preservation of the status quo pending decision by the arbitral body and imposes the duty on the parties of designating representatives and the duty of conference. By this enactment the strike then imminent was prevented and a settlement arrived at.

The letters of the President stating the situation are set out in Appendix C.

In 1922 despite Title III the great nation-wide shopmen's strike took place. This strike was occasioned by a nation-wide conspiracy by railway executives to destroy the employee organizations. The conspiracy was initiated contemporaneously with the termination of Federal control. In its proceeding No. 12066 the Interstate Commerce Commission found that the defendant management in 1920 had contracted out for repairs at the Baldwin and other outside shops three hundred locomotives, at the same time laying off many thousands of their own shopmen. The Commission found that the defendant management paid for the work over $3,000,000 more than it would have cost in their own shops. The only conceivable motive for this action was the destruction of the shopmen's organization. Later other managements took action having obviously the same aim. (See Contracting Out cases Railroad Labor Board Nos. 1078, 1079, 1080, Vol. III, pp. 544-551). In this movement the defendants were leaders and this "Pennsylvania Plan" was a portion of the means applied to further its object. This conspiracy was in defiance of the provisions of Section 301 and it might have been enjoined under that section. The right to organize

and to function through organization for the performance of the duties imposed by the act is protected thereby. However, the abuse by employers of the writ of injunction in labor disputes had resulted in the establishment of a policy on the part of employee organizations not to seek the aid of the writ to protect their rights. Hence, there was no application by employees to the Federal courts in equity to restrain the illegal acts of these railway executives. The employees preferred to resort to their legal right to use economic pressure through the strike instead of utilizing this legal remedy. The point is that although the strike took place while Title III was in effect, yet this is no argument against its effectiveness. The strike might have been prevented by enjoining under its provisions the illegal acts of these railway executives.

If employees can be brought to realize that the law of the land protects their rights as well as those of employers and that courts of equity will enjoin invasions of their rights in a proper case, a social advance will have been accomplished. In appropriate cases employees will come to waive their right to the use of economic pressure and await the action of the law.

A grant of the injunction sought herein will breathe life into Title III which is now in process of strangulation through the success of the fraudulent and illegal machinations of the defendants. It will preserve a social experiment in legislation tending to reduce the resort to force by substituting the rule of reason for calamitous strikes. It will demonstrate to employees that courts of equity will apply the principles of equity as well for them as for employers. It will show the managements of the great railroad corporations that Congress has protected the rights of railroad employees to function collectively and will tend to prevent another such conspiracy as that which brought about the shopmen's strike of 1922.

It is submitted that the principles underlying Title III are sound and should be preserved. These principles are:

> The interest of the public in industrial peace on railroads—not a peace enforced by oppression, but a peace resting on reason and justice in wage rates and working conditions.
> The preservation of the status quo pending decision by the Labor Board.
> The illumination of public opinion by findings of fact by the Labor Board.

The discontent with the act expressed by the attempt to repeal it is due to:

> An unwillingness on the part of many labor leaders to recognize the right of the public to railroad service uninterrupted by strikes. In this they resemble a number of railroad executives who resent public interference with regard to rates, security issues, etc.
> The omission of interested employees and of public officers to compel obedience to the mandatory duties imposed by the act.
> Successful defiance and evasion of its provisions by a number of railroad managements.
> Mistakes of the Railroad Labor Board.

The first is not a sufficient ground for repeal. The principle of public interest is obviously accepted by the American people.

A declaration by this Court that performance of the mandatory duties imposed can be compelled by proceedings in the courts will remove the second.

The proper course to remove the third is to improve the personnel of the Labor Board.

Congress in Title III has clearly declared its policy. It is now for this Court to secure it by directing the relief prayed for.

Appendices are attached as follows:

A. The text of Title III.

B. Letters of the President of the United States setting out the situation on which Congress acted.

C. The statement of the managers of the bill on the part of the House with reference to the Conference report.

Respectfully submitted,

HENRY T. HUNT,
Counsel for Appellant.

APPENDIX "A".

Transportation Act, 1920.

(Public—No. 152—66th Congress.)

(H. R. 10453.)

Excerpt Showing.

Title III—Disputes Between Carriers and their Employees and Subordinate Officials.

SEC. 300. When used in this title—

(1) The term "carrier" includes any express company, sleeping car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

SEC. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

SEC. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

SEC. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor

Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

SEC. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe:

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

SEC. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance

with the regulations of the Commission, as provided in paragraphs (1) and (2) of section 304, within thirty days after the passage of this Act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, whichever he is to represent.

SEC. 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working condi-

tions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which said Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301, of any dispute with respect to

wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board: *Provided,* That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scale of wages paid for similar kinds of work in other industries;

(2) the relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

SEC. 308. The Labor Board—

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

SEC. 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

SEC. 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any

member thereof may require, by subpoena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply with any subpœna or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpoena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

SEC. 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 a. m. March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

SEC. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, em-

ployees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

SEC. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

SEC. 316. The powers and duties of the Board of Mediation and Conciliation created by the Act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

APPENDIX "B".

LETTERS OF PRESIDENT STATING SITUATION.

(1)

THE WHITE HOUSE.

WASHINGTON, D. C., February 13, 1920.

GENTLEMEN: I address you as the Chief Executives of the largest railroad organizations, which are among the most important industrial democracies in the country. I ask you to bring this message and its enclosure to the attention of your members on all the railroads, to the end that they, at first hand, may understand the Government's views as to the present situation. I am confident that with this personal understanding on their part they will see that the position of the Government is not only just to all interests, but is, indeed, unalterable, and also protects the interests of the railroad employees. The fundamental theory of labor organizations is that their membership is intelligent and capable of reaching enlightened conclusions, and I think it is of paramount importance at the present time that this great body of American citizens shall have the fullest opportunity personally to consider the national problem of railroad wages in its national aspect and shall not in the absence of this opportunity form erroneous impressions on the basis of local or fragmentary information.

I have received two letters on this general subject signed by all but two of the executives to whom this letter is addressed. I have read these letters with the greatest care and have taken them fully into consideration.

On the 25th of last August, I publicly announced the conviction that a large permanent and general increase in railroad wages ought not to be made upon the basis of

the level of the cost of living then prevailing if that cost of living level were to be merely temporary, and I counselled railroad employees to hold their demands in abeyance until the time should arrive when it could reasonably be determined whether that level of the cost of living was temporary or not. They have patriotically and patiently pursued this course and in general have shown an admirable spirit in doing so.

I then anticipated and made it clear in my public statement that the time for determining whether or not the level of the cost of living was such as to be the basis of a readjustment of wages might not arrive until after the expiration of Federal control and accordingly gave my assurance to the railroad employees that in that event I would continue to use the influence of the Executive to see that justice was done them.

Federal control will end in sixteen days and in accordance with the policy as explained to the employees, it is now eminently reasonable and proper that I take such steps as will reassure them that their claims will be properly and promptly disposed of. This is all the more necessary because inevitably the change from Federal control to private control will in the absence of special provision involve delay in dealing with these matters which could not be otherwise than disquieting to the employees.

I wish, therefore, to announce to all railroad employees at this time that I propose to carry out the following steps:

1. In the event that in connection with the return to private control provision shall be made by law for machinery for dealing with railroad wage matters, I shall promptly use my influence and so far as such law confers power upon me, I shall promptly exercise that power, to bring about the earliest practicable organization of the machinery thus provided.

2. In the event that no such provision is made by law for dealing with these matters, I shall employ the influence of the Executive to get the railroad companies and the railroad employees to join promptly in the creation of a tribunal to take up these problems and carry them to a conclusion.

3. I shall at once constitute a committee of experts to take the data already available in the various records of the United States Railroad Administration, including the records of the Lane Commission and of the Board of Railroad Wages and Working Conditions and to analyze the same so as to develop, in the shortest possible time the facts bearing upon a just and reasonable basis of wages for the various classes of railroad employees with due regard to all factors reasonably bearing upon the problem and specifically to the factors of the average of wages paid for similar or analogous labor for other industries in this country, the cost of living and a fair living wage, so as to get the problems in shape for the earliest possible final disposition. The views of this Board will serve as a guide for me in carrying out the assurance I gave to the employees last summer that I would use the full influence of the Executive to see that justice was done them and will, I believe, be a means of avoiding what might be a long-drawn-out investigation of facts. While I propose to act at once in regard to this matter, and to avoid any delay in doing so, I shall, nevertheless, invite the co-operation of the railroad corporations and believe they will appreciate that it is to their interest, as well as to the public interest, to get these matters promptly settled.

I am sure it will be apparent to all reasonable men and women in railroad service that these momentous matters must be handled by an agency which can continue to function after March 1st, and therefore cannot at the present stage be handled to a conclusion by the Railroad Administration.

The accompanying report, which the Director General of Railroads has made to me, makes it clear that it has been wholly impracticable for the Railroad Administration to dispose of these matters up to the present time. Not only were the demands for general wage increases necessarily held in abeyance by reason of the policy announced by the Government last summer, but the demands for increases to correct inequalities were so general and far reaching as to become in themselves demands for general wage increases and were so complex and conflicting that despite continuous application on the part of the Board of Railroad Wages and Working Conditions and the other agencies of the Railroad Administration, the subjects could not be presented for even preliminary consideration by the Director General until the present month, and then in an incomplete form and with a lack of ability on the part of the Wage Board to reach an agreement growing out of the largely conflicting condition of the data as presented.

Not quite six months have elapsed since I expressed my belief and hope that the then high cost of living could be regarded only as temporary. This high cost of living (which in some respects has become even higher, but in other respects has already begun to respond to the corrective factors which have been and are at work) is the product of innumerable influences, many of them of world-wide operation. In the nature of things these readjustments could not come with rapidity. The campaign which the Government has inaugurated to aid in controlling the cost of living has been steadily gaining in momentum, will continue to be aggressively conducted, and I believe will have an increasingly beneficial effect, and this notwithstanding the fact that some of the most needed remedial measures which I recommended to Congress have not been adopted. However, preparation, consideration and disposition of these important wage mat-

ters ought not, in my opinion, to be postponed for a further indefinite period, and I believe the matters involved ought to be taken up and disposed of on their merits at the earliest practicable time.

Pending the consideration of these problems by the Director General of Railroads and by me, at least one class of railroad employees had indicated its unwillingness to await a conclusion and has announced its intention of striking. A strike of railroad employees would at any time be highly injurious to the public and particularly at this time would be harmful not only to the entire country, but to the railroad employees as well. Any interruption of transportation will, of course, have a serious adverse effect upon the industrial life of the nation at a peculiarly critical period.

Under the circumstances, therefore, I have the right to request and I do request that any railroad labor organization which has a strike order outstanding shall withdraw such order immediately and await the orderly solution of this question. The railroad men of America have stood loyally by their Government throughout the war, they must in the public interest continue to do so during this delicate period of readjustment.

I believe that every intelligent railroad employee will recognize the extreme importance of continued co-operation with the Government in this matter, and that any other course will prove not only a grave injury to the public, of which railroad labor is such an important part, but a serious blow to the important principle of collective bargaining and will merely delay rather than expedite the just and prompt solution of these important matters.

Cordially and sincerely yours,

(Signed) Woodrow Wilson.

B. M. Jewell, Acting President, A. F. of L. Bldg., Washington, D. C.

W. S. Stone, 1116 B. of L. E. Bldg., Cleveland, Ohio.

Timothy Shea, Acting President, 901 Guardian Bldg., Cleveland, Ohio.

L. E. Sheppard, President, Order of Railway Conductors, Cedar Rapids, Ia.

W. G. Lee, President, American Trust Bldg., Cleveland, Ohio.

S. E. Heberling, President, 326 Brisbane Bldg., Buffalo, N. Y.

E. J. Manion, President, Order of Railroad Telegraphers, 812 Star Bldg., St. Louis. Mo.

James W. Kline, General President, Brotherhood of Blacksmiths and Helpers, 1234 Transportation Bldg., Chicago, Ill.

Wm. H. Johnston, President, International Association of Machinists, A. F. of L. Bldg., Washington, D. C.

Martin F. Ryan, General President, Brotherhood of Railway Carmen of America, Hall Bldg., Kansas City, Mo.

Lewis Weyand, Acting President, Brotherhood of Boilermakers and Iron Shipbuilders, Wyandotte Bldg., Kansas City, Kan.

John J. Hynes, President, Sheet Metal Workers, 122 So. Ashland Blvd., Chicago, Ill.

James Noonan, Electrical Workers of America, Reisch Bldg., Springfield, Ill.

A. E. Barker, Grand President, United Brotherhood of Maintenance of Way Employees, 27 Putnam Ave., Detroit, Mich.

Jas. J. Forrester, General President, Brotherhood of Railway Clerks, Room 407, A. F. of L. Bldg., Washington, D. C.

D. W. Helt, President, Brotherhood of Railroad Signalmen of America, 728 13th St., N. W., Washington, D. C.

(2)

THE WHITE HOUSE.

WASHINGTON, 28 February, 1920.

GENTLEMEN: Your letter of the 14th instant and the subsequent arguments presented on your behalf with reference to the subject of pending claims for wage increases have had my careful consideration. The passage of the Railroad Bill by the House of Representatives on the 21st instant and by the Senate on the 23d instant, has made it evident that I could not act upon your suggestions until it should be determined whether the bill would become a law or not. It was manifest that if the bill should become a law the negotiations and consideration of the wage matter ought to proceed in harmony therewith.

The bill having now become a law, the way is open for immediate action on the wage matter in accordance with the terms of the bill. Section 301 of the bill evidently contemplates that the carriers and employees should, as suggested by you, select representatives who will thus constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of this wage problem. In accordance with the assurance I gave you last August and repeated in substance in my letter of the 13th instant, I shall at once request the carriers and the employees to join in this action. I believe such a step will go far toward clarifying and maturing the subject for final disposition. In fact, the sort of Board thus contemplated by Section 301 appears to be an appropriate substitute for the committee of experts which I have heretofore suggested, and indeed such a Board will be authorized to go further than such a committee could have gone.

While it is true that the provisions of Section 307, of the Railroad Bill, relating to the Labor Board will prob-

ably also come into operation as to this wage matter, nevertheless the Bi-partisan Board can make a great deal of progress which will materially diminish the time to be consumed by the Labor Board; and while the Bi-partisan Board is functioning, the appointment and organization of the Labor Board can be expedited.

I cannot share the apprehension of yourselves and your constituents as to the provisions of the law concerning the Labor Board. I believe those provisions are not only appropriate in the interest of the public, which after all is principally composed of workers and their families, but will be found to be particularly in the interest of railroad employees as a class.

The argument that the public representatives on the Labor Board will be prejudiced against labor because drawn from classes of society antagonistic to labor can and ought to be overcome by selecting such public representatives as cannot be charged with any such prejudices. Nor do I anticipate that the public representatives will be against wage increases because they involve rate inincreases. Not only must public representatives be selected who can be relied upon to do justice but the bill itself provides that the Labor Board shall establish rates and wages and salaries which in the opinion of the Board are "just and reasonable" and it is further provided that the entire Labor Board shall be guided by the very important standards which are provided in the law, those standards including the wages paid for similar kinds of work in other industries, the relation between wages and the cost of living, the hazards of the employment, the training and skill required, the degree of responsibility, the character and irregularity of the employment, and the correction of inequalities as the result of previous adjustments. Coupled with the direction to the Labor Board to take into consideration these important standards is the highly important direction to the Commission

to prescribe rates sufficient to admit of the payment of the reasonable operating expenses including, of course, fair rates of wages.

My hopes are that the putting into effect of these provisions with a carefully selected Labor Board, whose public representatives can be relied upon to be fair to labor and to appreciate the point of view of labor that is not longer to be considered as a mere commodity will mark the beginning of a new era of better understanding between the railroad managements and their employees, and will furnish additional safeguards to the just interest of railroad labor.

I am sure that every agency which will be involved in the creation of a Labor Board and in the conduct of negotiations fully appreciates that the wage demands are entitled to the earliest possible consideration and disposition, and therefore I do not anticipate delay in the appointment and organization of the Labor Board or in the other necessary steps.

Sincerely yours,
(Signed) WOODROW WILSON.

Messrs.: B. M. JEWELL,
W. S. STONE,
TIMOTHY SHEA,
L. E. SHEPPARD,
W. G. LEE,
S. E. HEBERLING,
E. J. MANION,
JAMES KLINE,
WM. H. JOHNSTON,
M. F. RYAN,
LOUIS WEYAND,
JNO. J. HINES,
JAMES NOONAN,
JAS. J. FORRESTER, and
D. W. HELT.

(3)

THE WHITE HOUSE.

WASHINGTON, March 1, 1920.

GENTLEMEN: In my letter of February 28th to the executives of labor organizations relative to the wage demands which your organizations have been pressing, I said, referring to the new Transportation Act:

"The bill having now become a law, the way is open for immediate action on the wage matter in accordance with the terms of the bill. Section 301 of the bill evidently contemplates that the carriers and employees should, as suggested by you, select representatives who will thus constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of this wage problem. In accordance with the assurance I gave last August and repeated in substance in my letter of the 13th instant, I shall at once request the carriers and the employees to join in this action. I believe such a step will go far toward clarifying and maturing the subject for final disposition. In fact, the sort of Board thus contemplated by Section 301 appears to be an appropriate substitute for the committee of experts which I have heretofore suggested, and indeed such a Board will be authorized to go further than such a committee could have gone.

"While it is true that the provisions of Section 307 of the Railroad Bill relating to the Labor Board will probably also come into operation as to this wage matter, nevertheless the Bi-partisan Board can make a great deal of progress which will materially diminish the time to be consumed by the Labor Board; and while the Bi-partisan Board is functioning, the appointment and organization of the Labor Board can be expedited."

I therefore request that your organization select such number of representatives as may seem appropriate to them to conduct the conference and negotiation contem-

plated by Section 301 to the end that such representatives may promptly meet in conference with the representatives selected by the railroad companies in accordance with the request I am making of them and may thus initiate the necessary proceedings.

I shall be obliged if you will advise the Director General of Railroads as to the representatives selected as here requested. As soon as he receives such advice, and advice as to the representatives selected by the railroad companies, he will arrange for all such representatives to begin their conferences and at such conferences questions of procedure can be settled and any question that may be raised as to whether the number of representatives of either the employees or carriers is sufficient can also be dealt with.

I enclose copy of my letter of this date to the Chairman of the Association of Railway Executives.

Sincerely yours,

WOODROW WILSON.

Messrs.: B. M. JEWELL.
L. E. SHEPPARD.
E. J. MANION.
M. F. RYAN.
JAMES NOONAN.
W. S. STONE.
W. G. LEE.
JAMES W. KLINE.
LOUIS WEYAND.
JAS. J. FORRESTER.
A. E. BARKER.
TIMOTHY SHEA.
S. E. HEBERLING.
WM. H. JOHNSTON.
JNO. J. HYNES.
D. W. HELT.

(4)

THE WHITE HOUSE.

WASHINGTON, D. C., March 1, 1920.

T. DEWITT CUYLER, Chairman, Association of Railway Executives, 61 Broadway, New York City.

DEAR SIR: On the 25th of last August I publicly announced the conviction that a permanent readjustment in railroad wages ought not to be made upon the basis of the level of the cost of living then prevailing if that cost of living level were to be merely temporary, and I counseled railroad employees to hold their demands in abeyance until the time should arrive when it could reasonably be determined whether that level of the cost of living was temporary or not. I then anticipated and so stated that the time for determining whether or not the level of the cost of living was such as to be the basis of a permanent readjustment of wages might not arrive until after the expiration of Federal control and I gave my assurance to the railroad employees that in that event I would continue to use the influence of the Executive to see that justice was done them.

During the month of February, 1920, the wage demands which were thus held in abeyance have been the subject of renewed and careful consideration by me. In a communication to representatives of railroad employees, I expressed the opinion that in view of the lapse of time during which the matter had been held in abeyance my judgment was that it ought not to be postponed for a further indefinite period, but on the contrary ought to be taken up and disposed of on its merits at the earliest practicable time; and I also explained that such a matter must be handled by an agency which could continue to

function after March 1st, the date of the termination of Federal control, and stated that in the event provision should be made by law for machinery for dealing with railroad wage matters I would promptly use my influence to bring about the earliest practicable organization of the machinery thus provided.

Since the railroad companies have now resumed the operation of their properties and since the Transportation Act has become a law, the way is open for the immediate handling of the wage matter in accordance with the procedure contemplated by that law.

I believe all will agree that the matter calls for the earliest disposition and for the most active and earnest co-operation to avoid any delay whatever in bringing it to a conclusion. Section 301 of the Transportation Act contemplates that the carriers and employees may and ought to select representatives who will in effect constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of wage problems subject to other provisions of the law.

In view of the generality of these demands, affecting the railroad employees on all the railroads which have been under Federal control and in view of the manifest desirability and justice of the earliest possible disposition of the demands, I request that the railroad companies select such number of representatives as may seem appropriate to them to conduct the conference and negotiation contemplated by Section 301 to the end that such representatives may promptly meet in conference with representatives selected by the employees in accordance with the request I am making of them and may thus initiate the necessary proceedings.

I shall be obliged if you will advise the Director General of Railroads as to the representatives selected as here requested. As soon as he receives such advice, and advice as to representatives selected by the employees,

he will arrange for all such representatives to begin their conferences and at such conferences questions of procedure can be settled and any question that may be raised as to whether the number of representatives of either the carriers or employees is sufficient can also be dealt with.

I understand that your Association represents almost all the principal railroad companies in the country and I am proceeding on the assumption that whatever is done by the railroad companies included in your Association will for practical purposes serve as an effective and adequate dealing with the problem and that other railroad companies so far as they may be interested will speedily associate themselves with the companies of your Association in carrying the matter forward. I am therefore not undertaking to address individually all the railroad companies in the country.

I enclose copy of my letter of this date to the Executives of the labor organizations which have been pressing their demands having general relation to the railroad employees on the railroads which have been under Federal control and with which organizations the Director General and I have been in conference.

Sincerely yours,

WOODROW WILSON.

APPENDIX C.

Statement, February 21, 1920, of the managers on the part of the House at the conference on the disagreeing votes of the two Houses (Cong. Rec., vol. 59, pt. 4, p. 3260, Title III, p. 3262):

> The House bill limited the disputes which were to be considered under its labor provisions to those involving employees who are members of certain specified railroad brotherhoods and shopmen's unions. The Senate amendment provided for the consideration of disputes of all employees and subordinate officials of carriers, organized or unorganized. The bill agreed to by the conferees provides for the adjustment of disputes of all railroad employees, not only members of the four brotherhoods or the shopmen's union, but also of the other railroad labor organizations. Unorganized employees and employees of sleeping-car or express companies and subordinate officials are also included. The officials included within this last term are to be determined by the commission under the authorization of paragraph (5) of section 300.
>
> The House bill established three adjustment boards, comprised of an equal number of the representatives of the specified railway brotherhoods and shopmen's unions and the railroads appointed directly by the employees and carriers. Such adjustment boards were authorized to receive disputes of any kind for consideration if both the railroad and the employees jointly agreed to submit the dispute to the consideration of the proper adjustment board. If the adjustment board, failed or refused to decide the dispute, either half of the members of the board might refer it to a corresponding appeal commission composed in the same manner as the adjustment board.
>
> The Senate amendment placed disputes in two classes, those relating to wages and working con-

ditions and those relating to grievances and matters of discipline. The latter class of disputes were to be considered by local regional boards of adjustment comprised of an equal number of representatives of labor and the carriers, appointed by the transportation board from nominees presented by the carriers and their employees. There was further created and established a committee of wages and working conditions formed in the same manner. This committee had original jurisdiction over all disputes involving wages and working conditions and the power to amend or disapprove the decisions of the regional boards for the purpose of securing uniformity of practice. The Senate amendment provided special temporary tribunals for the considerations of disputes of subordinate officials. Finally, disputes as to grievances and matters of discipline which the regional boards failed to decide might be referred to the committee on wages and working conditions, and all decisions of the committee on wages and working conditions were denied effect until approved by the transportation board.

The conference bill (see section 302) permits the formation by agreement between the carriers and their employees of voluntary adjustment boards with jurisdiction over disputes involving grievances, rules, or working conditions. There is further established a railroad labor board composed of nine members appointed by the President, by and with the advice and consent of the Senate, three from nominees offered by the carriers, three from nominees offered by the employees of the carriers, and three to be directly appointed and to be representatives of the public (see section 304). The railroad labor board has exclusive jurisdiction over disputes involving wages and also of disputes involving grievances, disputes, and working conditions in case no adjustment board has been formed by the carriers and employees who are parties to such dispute. The railroad labor board has appellate jurisdiction upon its own mo-

tion or upon the request of an adjustment board in case such adjustment board is formed but fails to decide such disputes.

The House bill provided for no representation of the public upon any of its boards or commissions. The Senate amendment subjected all decisions of its tribunals to review by a public board, the transportation board. The conference bill (see section 307 (c) provides for appointment of members to represent the public along with those representing the carriers and employees upon its supreme tribunal and, moreover, requires that though a decision may be reached by a majority vote, nevertheless a decision in respect to wages is not effective unless at least one of the public representatives concurs therein.

The House bill made it the duty of carriers and their employees to take all possible means to adjust their differences in the first instance before referring the dispute to any adjustment board. The Senate amendment had no provision upon this subject. *The conference bill contains a declaration, similar to that in the House bill, directing the officials of a carrier and their employees to appoint representatives to confer over all matters of dispute.* In case of the failure of such conference the House bill provided that no dispute should come within the jurisdiction of an adjustment board unless both the carriers and the employees jointly agreed to submit it to the adjustment board. The Senate amendment permitted disputes to reach a regional board or the committee of wages and working conditions upon the application of either party to the dispute, but made no provision for any action by any tribunal upon its own initiative. The provisions of the conference bill (see section 307 (a) and (b) permit action by the railroad labor board not only upon application of either party or by petition of unorganized employees but also upon the adjustment board's or the railroad labor board's own motion.

The House bill made permanent all decisions issued by the Railroad Administration or the ad-

justment boards in connection therewith in respect to wages and working conditions. The Senate amendment had no provision upon this subject. The bill of the conferees, however (see section 312), forbids the carrier to reduce wages agreed to under such decisions during the guaranty period only.

The House bill contained no enforcement provisions, but relied on the voluntary observance by the parties of all decisions made by them. A blanket penalty was contained in the House bill, but there were no corresponding duties save that representatives upon the boards and commissions "shall" reach a decision, to which the penalty applies. The Senate amendment made extensive use of criminal penalties to enforce all decisions of its tribunals and provided for a fine of $500 or imprisonment not exceeding six months for any carrier or official thereof who fails to obey any decision of its tribunals and for any person who enters into a conspiracy to restrain the operation of trains in interstate commerce. The conference bill contains no penalty provisions for a violation of a decision of the railroad labor board, but provides that all decisions shall be given extensive publicity. There is a further provision—see section 313—that the railroad labor board may, after notice and hearing, determine whether any decision by an adjustment board has been violated by either party to which the decision applies. In case the railroad labor board determines that such violation occurs, it may make public such findings in such manner as it may determine.

The House bill provides for the transfer to the adjustment boards and appeal commissions of certain records of the board of mediation and conciliation, established under the Newlands Act, but both the House bill and Senate amendment permit the general jurisdiction of that board over all railroad labor disputes to remain. The conference bill, however, denies jurisdiction of the board of mediation and conciliation over any dispute which may be adjusted by the adjustment boards or the railroad labor board.

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WM. R. STANSBURY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1924. No. 629.

The Pennsylvania System Board of Adjustment of The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Appellant,

against

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, C. S. Krick, M. W. Clement, T. B. Hamilton and I. W. Greer, Appellees.

ANSWER OF APPELLEES TO APPELLANT'S MOTION TO ADVANCE.

The decision of the United States Circuit Court of Appeals for the Third Circuit in this proceeding, reported in 296 Federal Reporter 218, affirming the decree of the District Court dismissing the Bill, followed and is based upon the decision of this Court in Pennsylvania Railroad Company *vs.* United States Labor Board, 261 U. S. 72, involving the construction of Title III of the Transportation Act, wherein the substantial questions involved in this proceeding were determined, particularly with respect to the right of the body of employees to act as a unit through their representatives, the Court in that case saying (page 84):

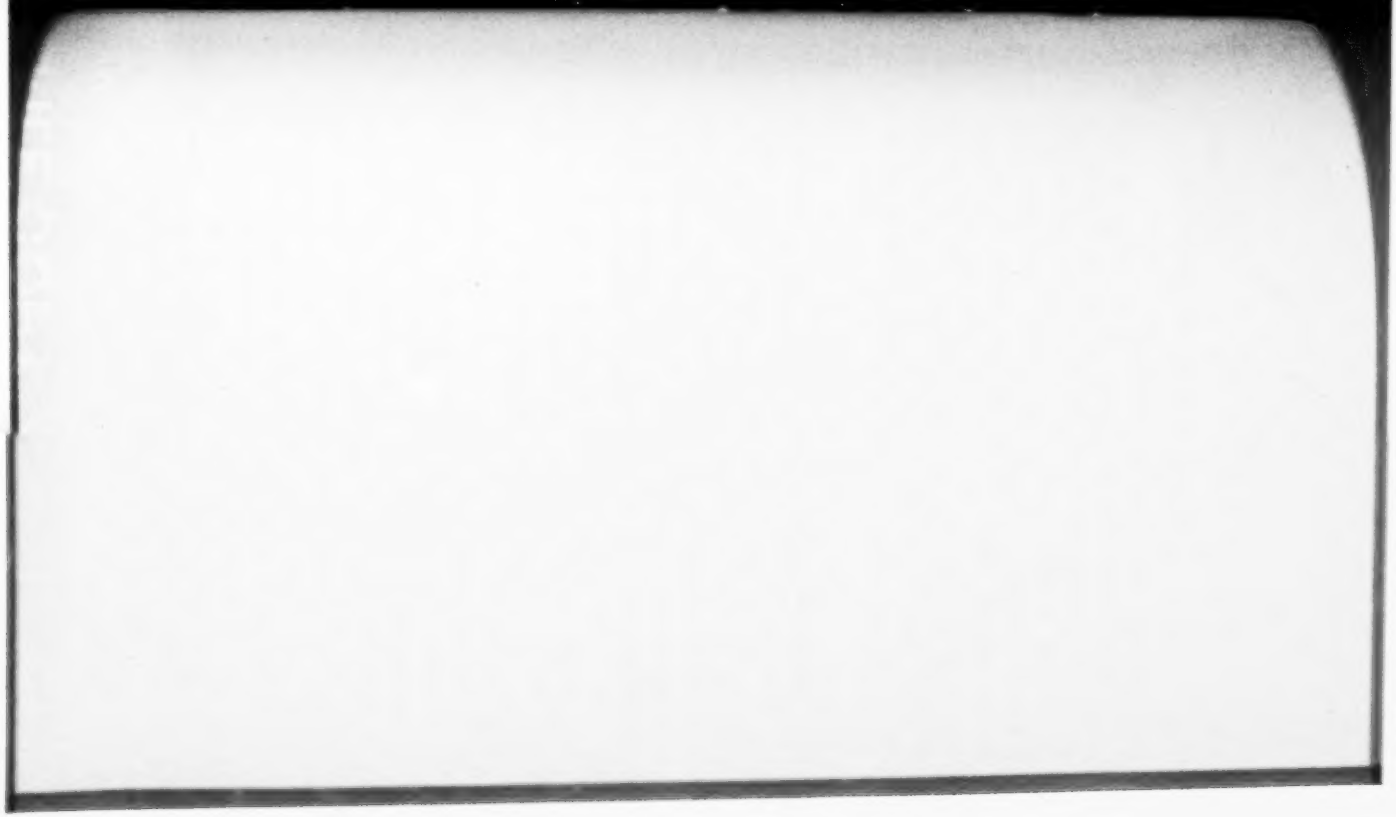
"The counsel for the Company insist that the right to deal with individual representatives of its employees as to rules and working conditions is an inherent right which cannot be constitutionally taken from it. The employees, or at least those who are members of the labor unions, contend that they have a lawful right to select their own representatives, and it is not within the right of the Company to restrict them in their selection to employees of the Company or to forbid selection of officers of their labor unions qualified to deal with and protect their interests. This statute certainly does not deprive either side of the rights claimed.

"The jurisdiction of the Board to direct the parties to do what it deems they should do is not to be limited by their constitutional or legal right to refuse to do it. Under the Act there is no constraint upon them to do what the Board decides they should do except the moral constraint, already mentioned, of publication of its decision. * * * The statute does not require the Railroad Company to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees."

So far, therefore, as weight should be given to the reasons stated by the appellant for the advance of the cause, that Congress should be advised in contemplated legislation of the construction of this Court of Title III with respect to the matters stated in the Motion, such construction is definitely declared in the case above cited, and it is respectfully submitted that for the purpose suggested in the Motion no decision of the Court is presently required.

For these reasons it is respectfully urged that the Motion to advance the case for hearing be denied.

JOHN HAMPTON BARNES,
For Appellees.



In the Supreme Court of the United States.

OCTOBER TERM, 1924. No. 629.

The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Appellant,

vs.

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, C. S. Krick, M. W. Clement, T. B. Hamilton and I. W. Geer, Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF APPELLEES.

ARGUMENT.

The discussion in the major part of the brief of the appellant and the text of the argument is what should in the judgment of appellant have been the operation and effect of

Title III of the Transportation Act upon disputes between employer carriers and their employes, and the procedure to be adopted upon the interpretation made by the appellant. It is assumed by appellant that a remedy is provided by the Act and that orders or decrees arising therefrom are mandatory upon parties and enforcible by the courts. Upon this erroneous assumption as a foundation is erected the structure of this Bill and the relief prayed for therein, that the course followed by the appellees was in defiance of a legally enforcible right, and that its development, by the appellees, constitutes a conspiracy. These assertions while economically interesting, afford no basis to sustain the prayers of the Bill, because, as shown hereafter and more fully, and as declared in the opinions of the District Court and the Circuit Court of Appeals dismissing the Bill, the courts are without power under the decision of this Court, hereinafter referred to, to enforce orders of the Labor Board. It follows, therefore, that aside from the fallacy and weakness of this position and of its lack of support by the courts, the allegation of conspiracy cannot be sustained because, as more fully shown hereafter, there can be no conspiracy unless there be an intent to accomplish an unlawful act or to do a lawful act by unlawful means by a combination of parties to that end. Thus the right to relief in equity upon the allegations of the Bill must be founded upon the position taken by the appellant that the representatives of the employes of the appellee Company were improperly elected under Title III of the Transportation Act because the organizations of employes were excluded as representatives, and that, therefore, all conferences, agreements, decisions, rules and working conditions made by the appellees with the representatives chosen at the election described in the Bill are void. Upon this question the Circuit Court of Appeals said (Record, page 374):

> "The complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that

> the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights. To these alone we shall address discussion."

It is inferred that a conspiracy exists between the appellees on the one side and the representatives chosen at the election. No citation of authority is given supporting the averment of conspiracy. The analogy between the interference upon such ground by the courts with acts tending to interfere with the flow of interstate commerce has no application (Appellant's Brief, page 72). The public is not concerned with this controversy except so far as the interference with existing conditions might create a strike and thus interfere with the flow of commerce. This event would be speculative and remote, and in any case is not involved in this proceeding, and even should it be involved, it would seem clear that the Clayton Act, Section 20, prohibits injunctive relief in a case of this character. (Michaelson *vs.* U. S., 45 Sup. Ct. Rep. 18.)

The District Court dealt in its opinion (294 Fed. 556), with this question thus (Record, page 360):—

> "The plain truth of the whole matter would seem to be that the only legal right which the plaintiff has is a right to an expression of the opinion of the Labor Board that under all the circumstances and considerations affecting the subject matter they ought to have more than the strictly legal rights which belong to them, although even this does not belong to these plaintiffs *eo nomine* but to the employes of the defendant company. This right has already been given them by the award of the Labor Board, and no Court can grant them more than their legal rights."

The Circuit Court of Appeals said (Record, page 375):

> "Further asserting statutory rights in themselves, the complainants maintain that the conduct of the Com-

pany and its officers was a statutory offense in the nature of conspiracy under the provisions of Section 19 of the Criminal Code which provides that, 'If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the * * * laws of the United States,' they shall be punished, and they further maintain that injunction will lie to restrain means for promoting such conspiracy. *Pettibone* vs. *United States*, 148 U. S. 197; *Duplex Co.* vs. *Deering*, 254 U. S. 465. Even so, the thing which is done or is threatened must in itself be unlawful, or, if lawful, it must be carried out by unlawful means in order to constitute a conspiracy. The thing here charged against the Company was conduct which, under the terms of the Transportation Act and in the light of the decision of the Supreme Court in *Pennsylvania Railroad Company* vs. *Labor Board, supra,* was not unlawful either in purpose or in means employed to carry out the purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right."

The question with respect to the legality of the selection of representatives has been the subject of consideration by the District Court for the Eastern District of Pennsylvania in the case of *Fenstemacher* vs. *Pennsylvania Railroad Co.*, 296 Fed. 213, wherein there was an application for an injunction based upon substantially the same averments as in the case at bar, save the allegation of conspiracy. Therein the Court stated that the position of the defendant was that it was under no obligation to confer other than with the representatives of its own employes and the position of the plaintiff was that the conference commanded by law was one between the carrier and the labor organization to which those of the employes who were organized belonged, together with the representatives of those employes who had no such organization. The District Court, after citing the

opinion of the Circuit Court of Appeals for the Seventh Circuit in *Pennsylvania Railroad Co.* vs. *Labor Board,* 282 Fed. 701, dealt with the question of the authority of the Court, stating (p. 216):—

> "All must agree that a controversy which can be settled only by an agreement wholly voluntary or reached upon compulsion is a controversy with which the courts without statutory command have nothing to do."

The same Court also dealt with these questions in the case of *Brotherhood of Railway &c. Employes* vs. *Pennsylvania Railroad Co.,* 296 Fed. 218, upon an application for an injunction, wherein the Court declined to issue an injunction, and the Circuit Court of Appeals in its opinion said:—

> "We find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employes or further to contest the matter before the Labor Board." (Record, page 375.)

After the cases in the District Court were decided this Court heard and decided on February 19, 1923, the case of *Pennsylvania Railroal Company* vs. *U. S. Labor Board,* 261 U. S. 72, involving the construction of Title III of the Transportation Act.

The Circuit Court of Appeals in its opinion in this case recites the history of that case (Record, page 372).

The application of the complainant in that case was that the Labor Board be restrained from publishing under section 313 of Title III of the Transportation Act that the Railroad Company had violated the Board's decision under that Act, known as decision No. 218. This Court held that publication of the decision of the Labor Board is authorized by the said section and that this power constitutes the only

method by which the decisions can be enforced (page 79). This Court then discussed fully the question of the proper representatives of the employes, saying (page 84):—

> "The counsel for the Company insist that the right to deal with individual representatives of its employes as to rules and working conditions is an inherent right which cannot be constitutionally taken from it. The employes, or at least those who are members of the labor unions, contend that they have a lawful right to select their own representatives, and it is not within the right of the Company to restrict them in their selection to employes of the Company or to forbid selection of officers of their labor unions qualified to deal with and protect their interests. This statute certainly does not deprive either side of the rights claimed."

The Court then discussed the provisions under Title III for action by the Board and continues (page 84):—

> "The jurisdiction of the Board to direct the parties to do what it deems they should do is not to be limited by their constitutional or legal right to refuse to do it. Under the Act there is no constraint upon them to do what the Board decides they should do except the moral constraint, already mentioned, of publication of its decision. * * * The statute does not require the Railroad Company to recognize or to deal with, or confer with labor unions. It does not require employes to deal with their employers through their fellow employes. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory cooperation and leaves it to the two sides to accept or reject the decision."

This principle has been re-affirmed by this Court in the recent case of *Michaelson* vs. *United States*, 45 Sup. Ct. Rep. 18 (October 20, 1924), wherein it is said, page 21:—

> "The Labor Board was not an employer, but arbitrator, whose determination, moreover, had only the force of moral suasion."

So far, therefore, as the appellant rests its Bill upon the allegation that the Company and its officers could not deal with the representatives of the employes chosen in the manner set out in the Bill, it is established that there is no basis upon which such allegation can be sustained, this Court having definitely decided to the contrary.

There can be no conspiracy except with the intent and purpose or with the effect of accomplishing an unlawful act by a combination of persons to that end, (Pettibone *vs.* U. S., 148 U. S. 197; Duplex Co. *vs.* Deering, 254 U. S. 465), and as said on page 66 of Appellant's Brief, conspiracy may be defined as: "A combination of two or more persons by concerted action to accomplish an unlawful purpose, or a purpose not in itself unlawful by unlawful means." There is here no unlawful act and no intent to commit one by any means lawful or unlawful. The transaction described must necessarily be conducted by representatives of the employes and the officers of the carriers through whom only can it act as a corporation. Therefore it is a necessary incident to any action under the Transportation Act that a number of persons shall be involved in its occurrence. As well might the complainant have been charged with conspiracy in its united action to establish the rights it claims or to assert them in this proceeding.

Upon this question the Circuit Court of Appeals said (Transcript of Record, page 373).

> "The theory of these cases is both negative and affirmative. It is negative in the sense that the complainants do not expressly ask the Court to enforce any of the decisions which the Labor Board made in this dispute. Obviously, this is for the reason that the Supreme Court, in Pennsylvania Railroad Co. *vs.*

United States Railroad Labor Board, 261 U. S. 72, 43 Sup. Ct. 278, 67 L. Ed. 536, decided that orders of the board are not enforcible by the courts. Going a step further, they say their position is entirely independent of decisions Nos. 119 and 218 of the Labor Board prescribing rules and form of ballot for choice of representatives by the employes, and of Decision No. 1829 declaring that the Company had violated its decision, although the practical effect of a decree granting the prayers of their bills would be the enforcement of these orders. The theory is affirmative in the sense that the complainants stand upon what they describe as their 'civil and statutory rights,' and, averring a conspiracy to deprive them of these rights, they invoke the injunctive remedy of a court of equity, in the absence of an adequate remedy at law, to restrain the respondents from continuing and completing such conspiracy to their injury."

Appellant also rests its application for equitable relief upon the ground that appellees have violated Sections 19 and 37 of the Criminal Code, set out at pages 66 and 69 of its brief. Section 19 of the Criminal Code (7 Fed. Stat. Ann. 2nd Ed. 484) is as follows:—

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

If appellant's theory that appellees have violated this section of the Criminal Code is sound, then appellees would be subject to indictment and cannot be charged with conspiracy.

In *U. S.* vs. *N. Y. C. & H. R. R. Co.*, 146 Fed. 298, the several defendants were indicted charged, among other things, with a conspiracy to give rebates contrary to the provisions of the Interstate Commerce Act, whereby upon conviction the parties were subject to fine. The Court held that when an offense requires concert of action by at least two parties, an indictment will not lie charging such parties with conspiracy to commit the same offense, saying (p. 303):—

> "When the concurrent action of two persons is necessary to perpetrate a certain crime, and all that they do is to agree to do it and to do it, it seems difficult to claim that their agreement to act is in law a conspiracy, and their act a distinct crime, and that the agreement to act can be punished more severely or differently from the act itself. I think that the offense of giving or receiving rebates is such an act. It requires the concurrence of two persons. A rebate cannot be given unless there is someone who agrees to receive it and who does receive it, and cannot be received unless there is someone who agrees to give it and who does give it. The claim that the agreement to give it is a conspiracy punishable by imprisonment, while the actual giving of it is an offense only punishable by a fine, seems to me too subtle a distinction to be drawn in the administration of criminal law."

This principle was approved in the following cases:—

U. S. *vs.* Shevlin, 212 Fed. 343;
U. S. *vs.* Burke, 221 Fed. 1014;
McKnight *vs.* U. S., 252 Fed. 689;
Vannata *vs.* U. S., 289 Fed. 424, 427.

Moreover Section 19 of the Penal Code is limited in its application to political rights. (*U. S.* vs. Wheeler, 254 Fed. 611; 254 U. S. 281.)

The Circuit Court of Appeals disposed of this matter in that portion of its opinion quoted above. (Record, pp. 375-376.)

Section 20 of the Clayton Act provides in its concluding clause "nor shall any of the acts specified in this paragraph be considered or held to be violations of *any law of the United States.*" That paragraph, among other things, specifies any act or thing which might lawfully be done in the absence of a dispute between employer and employes, by any party thereto. If no dispute between appellant and appellees existed, the lawfulness of the acts and things which appellant alleges in its Bill were done by appellees could not be questioned. These acts are among those specified in the concluding paragraph of Section 20 of the Clayton Act and by its express terms cannot be violative of any law of the United States.

Section 37 of the Criminal Code which it is alleged appellees have violated, is as follows:—

> "If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of such conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars or imprisoned not more than two years or both."

It is only necessary to consider this in connection with the opinion of this Court in Pennsylvania Railroad Company *vs.* Labor Board, supra, construing Title III of the Transportation Act to demonstrate that the appellees cannot be said to have committed any offense against the United States. This Court expressly decided in that case that Title III

of the Transportation Act does not require the Railway Company to recognize or to deal with, or confer with labor unions. If the appellees, therefore, have done nothing which is forbidden by the Statute, it cannot possibly be said that they have conspired either to commit an offense against the United States or to defraud the United States.

Appellant is asking the courts to do what the Circuit Court of Appeals for the Eighth Circuit in the case of *Daniels*, et al. vs. *Portland Mining Company*, 202 Fed. 637, refused to do, namely, invade the field of the legislative branch of the government. In that case the suit was brought by three mining corporations on behalf of themselves and many others to enjoin defendants from conducting business as assayers or purchasing stolen ore. The District Court granted a preliminary injunction and the Circuit Court of Appeals reversed the order, saying (p. 639):—

> "We think the injunction was an inadmissible exercise of the judicial power. Consistently with the fullest recognition of the progressive and flexible character of equity jurisprudence and its continuing adaptability to the increasing magnitude and complexity of modern affairs, care must nevertheless be taken not to transgress its fundamental limitations. Though the writ of injunction may be properly employed to protect rights of property, however great or small, complicated or simple, it should not be made a vehicle for invading the legitimate legislative province of government or a means of establishing a system of rules for the regulation of the business of a community. Nor should it be used as an ordinary supplement to the criminal laws of the state."

The Supreme Court in that case refused a petition for a writ of Certiorari (229 U. S. 611).

The District Court in dismissing the Bill in this case said: "Our difficulty is in recognizing the presence of the element

either of lawfulness or unlawfulness * * * in what the defendant did or refused to do or in its every act or in any part of its conduct," (Record, page 361). It is clear, therefore, that the provisions of the Criminal Code relied upon by the appellant will not sustain the prayers of this Bill, and complainant must be and is relegated to the allegations with respect to the alleged wrongs suffered by it in the administration of Title III of the Transportation Act, and it is definitely shown by the preceding portions of this brief that there has been no breach by the appellees of the provisions of that Act and therefore, there was no unlawful act committed or any unlawful means adopted to commit an act.

It follows, therefore, that in substance this action is an attempt to enforce a decision of the Labor Board and it is shown by the decision of this Court in *Pennsylvania Railroad Company* vs. *Labor Board, supra*, that the Courts cannot enforce a decision of the Board.

The District Court correctly defined the rights of the parties and the powers of courts and the Labor Board in the following portion of its opinion (Record, p. 356):—

> "A Court, although it can award to a litigant only that to which he has a legal right, has the power to see to it (within practicable limits), that he gets what is awarded him. The Labor Board has no such power. The judgment it may render may be acceptable to neither party but each has the legal right to accept it or refuse to follow it. If the parties refuse acquiescence all that the Board can then do is to give publicity to its ruling, leaving the parties to their willingness to adjust the disputes under the guidance and perhaps the stress of public opinion, influenced, or it may be aroused, by the opinion of the Board."

As the acts which the appellees are alleged to have committed are within their legal rights to pursue, they cannot upon any ground be asserted to be an obstruction of the

utilization of Title III by the clerical and station employes. As pointed out by this Court and also by the District and Circuit Courts the courts have no power under the Act to enforce decisions of the Labor Board. The Court rightly ruled that what appellant is asking in this case, substantially, is the enforcement of a ruling of the Labor Board and it, therefore, was correct in dismissing the bill. It is submitted upon all the grounds relied upon that the order appealed from should be affirmed.

JOHN HAMPTON BARNES,
Attorney for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 629.—October Term, 1924.

The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Appellant, *vs.* The Pennsylvania Railroad Company, Samuel W. Rae, W. W. Atterbury, et al., Appellees.	Appeal from the United States Circuit Court of Appeals for the Third Circuit.

[March 2, 1925.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This case turns on substantially the same questions as those just decided in *Pennsylvania Federation No. 90* against the same defendant. It is a bill in equity by a trade union called The Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, made up of several classes of employees, clerical and otherwise, of the Pennsylvania Railroad, seeking to enjoin the Company from maintaining the same kind of alleged conspiracy as that described and complained of by Federation No. 90 in the previous case. There is no prayer in the bill in this case for damages as there was in the other, but the circumstances and the law sought to be applied to them are in every respect similar. As in the previous case, elaborate briefs were filed to justify the contention that Title III of the Transportation Act vested the employees of the Pennsylvania Road with definite rights, the violation of which constituted a legal wrong and that on these a charge of conspiracy could be predicated, and a remedy by injunction might be had in behalf of the complainants. For the same reasons as those stated in the previous case, the same conclusion must be reached. The Circuit Court of Appeals and the District Court were therefore right in dismissing the bill. The decree is

Affirmed.